

## **Exhibit 4**

**Carl Thompson****To...** Dan Grider**Cc...** Abby Saadat; Andrea Matusek**Bcc...** Carl Thompson; cethompson@wait-thompson.com; th6341@att.com**Subject:** Fiber WAN RFP Response Summary**Attachments:**

Dan,

Following is a summary of RFP Responses for the Fiber WAN:

**1. Three (3) vendors responded, AT&T, Sunesys, and Time-Warner****2. Response specifics:**

- a. AT&T was fully responsive and offered the lowest prices
- b. Sunesys was fully responsive and offered the highest prices (over twice that of AT&T)
- c. Time-Warner submitted a no-bid letter indicating that, due to a merger, they could not provide the service for at least another year.

**3. Recommendations:**

- a. It is recommended that the District accept the AT&T proposal with a five (5) year agreement.
- b. Since the Fiber WAN is a "Mission Critical Service" and the added bandwidth is essential for existing instructional programs, it is recommended that the District authorize AT&T to begin the planning and implementation of the Opt-E-MAN WAN immediately. Although there are some financial risks associated with E-Rate by not waiting for funding approval, the latter will insure that the service is in place prior to the start of the next school year (2007-2008).

Note: Due to the sporadic nature of funding approval letter releases, we cannot predict when ours might be received. The funding approval letter for 2006-2007 was received early, May 15, 2006. On the other hand, the funding approval letter for 2005-2006 was received late, November 12, 2005.

- c. The AT&T authorization should take the form of the following sent in an e-mail to Tom Holland, AT&T Sr. Account Representative:

***"This e-mail authorizes AT&T to begin the planning and implementation of the Opt-E-MAN wide area network. Due to E-Rate funding requirements, no services are to be completed and/or invoiced prior to July 1, 2007. Please target July 31, 2007 as the completion date for the project. In the event that Year 2007 E-Rate funding is denied, it is understood that the District shall be responsible for only construction and/or monthly service costs incurred to that point."***

The FedEx package contains two (2) copies of the AT&T contract; a single page copy of the Summary of Costs for the 5 Year Agreement; a single page spreadsheet with detailed router information and costs; and a two page CA Calnet purchase document for the routers and associated items.

Tom Holland will meet with you and Abby at 11:00 am on Monday January 22, 2007 to sign the contract. Tom can answer any questions you might have relating to the contract or the other items that I have included.

As backup, the router spreadsheet can be attached to the Board agenda item. Once approved, please delay processing the purchase order until I get back to you. We want to dovetail the router (and associated items) with the actual Opt-E-MAN WAN installation. Because there are time sensitive maintenance items on the list, we want to delay purchase as long as possible.

I have annotated one set of the 5 year cost summary/router spreadsheet pages for your info. The other is clean and may be used as an attachment. Tom Holland will hand carry the contract documents to AT&T for signature. He will return one original set to you and an electronic version to me.

Please let me know if you need any additional information.

Carl



Thomas Holland  
Senior Account Manager, AT&T

101 W. Broadway  
San Diego, CA 92101  
619-237-3978  
th6341@att.com

January 11, 2007

Andrea Matusek, Purchasing Supervisor  
Carl E. Thompson, E-Rate Consultant  
Encinitas Union School District  
101 S. Rancho Santa Fe Rd.  
Encinitas, CA 92024

Dear Ms. Matusek and Mr. Thompson:

As a district launched in 1882, Encinitas Union School has a rich history as well as a flourishing present. Today, Encinitas Union promotes an forward-looking educational environment that encourages fulfillment of each child's learning potential—and educators district-wide work hard to develop the skills and confidence that prepare students for lives in a fast-changing world.

Serving the City of Encinitas and the La Costa area of Carlsbad in North San Diego County, you educate about 5,600 students K-6 grades in nine schools encompassing ten different sites. And, all of the District's schools have won acclaim, recognized as California Distinguished Schools, and two of them--La Costa Heights School and Olivenhain Pioneer—named National Blue Ribbon Schools. Plus, students post high test scores in academic and supplemental programs.

We know that your district leaders maintain educational excellence by encouraging and supporting educators, who offer varied programs, use creative techniques—and promote the idea of learning as a lifelong activity. Furthermore, in the interest of disseminating information securely, District leaders address the ongoing challenge of maintaining telecommunications that are viable, efficient, and reliable.

Via this RFP, Encinitas Union School District is seeking a solution that will improve network reliability and provide greater bandwidth, as you upgrade from copper-based T1 to broadband optical services. We know that your district is in a growth mode and you anticipate even more network traffic due to the increasing use of United Streaming, new business and instructional applications, including equipment-based VoIP.

AT&T has your business currently, and, of course, we want to be your provider for the future.

In response to your RFP, AT&T proposes OPT-E-MAN® Service.

AT&T is familiar with your district and your network needs, and we can offer you:

- Strong support
- Many years of experience
- Technical knowledge that's the best in the industry



Thomas Holland  
Senior Account Manager, AT&T

101 W. Broadway  
San Diego, CA 92101  
619-237-3978  
th6341@att.com

- E-rate knowledge
- A history with Encinitas Union School District that shows we deliver

AT&T appreciates your business, and we hope that you'll choose to continue this mutually beneficial relationship. As you weigh the merits of providers, remember that AT&T has the strength and experience of more than 100 years' service. This comes into play when you expect reliability, smart service, and a provider-for-the-long-run. We have shown you what we can do, and we continue to improve on our level of delivery; AT&T doesn't rest on its laurels.

We *want* your business once again. We believe that AT&T has performed in a way that shows our integrity and ability—and how much we value Encinitas Union School District.

Sincerely,

A handwritten signature in cursive script that reads "T. L. Holland".

Thomas Holland  
Senior Account Manager, AT&T

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## **Executive Summary**

Says Dr. Lean King, Encinitas Union School District superintendent, "We believe that children thrive in learning environments that are nurturing and intellectually challenging. Our high levels of student achievement, skilled professional staff, modern school facilities, and up-to-date instructional materials aligned to state and national standards are some of the key reasons the U.S. Department of Education has named two of our schools as National Blue Ribbon Schools, and the California Department of Education has awarded all nine schools their coveted California Distinguished Schools recognition."

Little wonder, then, that these well-conceived strategies build a bridge to continued success for the district. As educators successfully work toward ensuring consistent values system-wide, Encinitas Union has developed a distinctive culture that attracts and retains exceptional people, new operating models that are adaptive and flexible, innovative and adaptable programs, and student advocacy that is deep and broad.

You're all about collaborative relationships, and AT&T is proud to be one of your partners in progress.

We have observed that the district's accomplishments show the level of engagement of stakeholders and the thousands of hours of work that people have devoted to making the school system stronger. That's how your district is making a positive difference in the lives of students.

Because we know that Encinitas Union School District wants to ensure that its campuses are well-equipped, we think you'll choose once again to work with AT&T, a provider that understands the quality you value—and can deliver the top communications that Encinitas Union deserves.

## **What Encinitas Union School District Wants**

We know that Encinitas Union wants a provider for fiber-optic WAN (F-WAN) service district-wide.

The new F-WAN:

- Must offer 5Mbps-100Mbps scalable bandwidth between the District Office (Hub), each of the District's nine school sites, and the San Diego County Office of Education (SDCOE), the District's ISP.

- Must permit Point-Point, Point-Multi-Point, and Multi-Point-Multi-Point service.
- Will improve network reliability and provide bandwidth scalability by upgrading from copper-based T-1 to broadband optical services.
- Will provide a switched Ethernet wide area network.
- Will offer Layer 2 Ethernet connectivity for transparently interconnecting local area networks (LANs) throughout the District.
- Will have these features:
  - 10/100 MB Ethernet physical connections at each of the nine remote school site locations.
  - Each 10/100 MB connection site must be capable of bandwidths ranging from 5Mbps to 100Mbps, your RFP specifies bandwidths of 100Mbps between the District Office and each remote site.
  - At the District Office (DO), 1 Gigabit Ethernet physical connection (Network Hub). This 1Gigabit connection will act as a single-user network interface upon which virtual connections to the nine remote sites will be multiplexed. The connection must be capable of supporting bandwidths from 5Mbps to 1 Gigabit. Bandwidth requirements must be equal to or greater than the total bandwidth of remote sites.
  - Ethernet Virtual Circuits (EVC) must provide connectivity between each of the nine remote school sites and the single 1 Gigabit circuit at the Network Hub.

## **What AT&T Proposes**

In response to your RFP, AT&T wants to assure Encinitas decision-makers that AT&T can meet the listed requirements.

With this proposal, we are recommending our OPT-E-MAN® Service, described below.

## **OPT-E-MAN® Service**

OPT-E-MAN® Service is a switched Ethernet service that connects your LANs within the same metropolitan area. OPT-E-MAN service provides a fully managed service that uses optical transport.



OPT-E-MAN service uses our network strength and Cisco equipment to create a scalable optical service within your metropolitan area. This service provides flexible bandwidth options, from 5 Mbps to 1 Gbps, to help you meet your growing Ethernet application needs. This service supports many transport data configurations (point-to-point, point-to-multipoint, multipoint-to-multipoint)--and uses physical and virtual connections to satisfy your specific business requirements.

OPT-E-MAN service uses Ethernet Virtual Connections (EVCs) to transmit Ethernet LAN frames that run over optical fiber to your intraLATA network. The EVCs also transmit to the Internet or a network-based VPN service. The fiber transport connects to network-terminating equipment at your location, and you connect to the service using a router, bridge, or switch.

OPT-E-MAN can address the following needs:

- **Cost Control**—implement a communications system that can deliver valuable features without dramatically increasing the costs. You need to reduce the cost of your service, maintenance, and administration without compromising on quality.
- **Simplicity**—simplify the process of managing your communications system. You need to improve your technology without spending a lot of time learning how to use additional equipment.
- **Access**—gain and maintain access to the vital information and communications resources needed for success. You need high-speed access to multiple locations and the ability to communicate through email to clients outside your email system.

Here are some features that are inherent in OPT-E-MAN service:

- **Competitive Pricing**—Priced at 15-20% less than similar services, OPT-E-MAN service provides greater bandwidth levels and equivalent contract terms. OPT-E-MAN service offers you a known protocol that reduces the operational costs of training, maintenance, and equipment.
- **24x7 Management Center**—Our Enhanced Network Operations Center (ENOC) provides 24-hour management and monitoring of your service, which reduces your management responsibilities and service costs because we handle the work ourselves.
- **Optical Ethernet Access**—Optical Ethernet offers seamless, flexible connections between multiple business locations within a metropolitan area. It provides you

with high-speed Ethernet transport ranging from 5 Mbps to 1 Gbps and supports distances of up to 50km.

You can choose from the following options available with OPT-E-MAN service:

- **Bronze Service**—supports data applications with time-varying traffic and/or those applications that are lower in priority.
- **Silver Service**—supports applications that require minimal loss and low latency variation, such as VoIP and interactive video.
  - The **Opt-E-MAN** solution proposed for Encinitas USD includes the Silver Service level.

OPT-E-MAN service uses these components:

- **Ethernet Port, Transport, and Interface**—come from the network terminating equipment at your location
- **Ethernet Virtual Connection (EVC)**—crosses the physical connection and the Ethernet cloud

### **Differentiators: Advantages of Aligning with AT&T**

AT&T isn't your average communications company. This means there are many advantages of AT&T that you won't get with other providers, such as the following:

- Your AT&T account team has experience and expertise—we know what we're doing. And that's key.
- AT&T has pioneered products and equipment and services. We have the lessons learned from 100+ years in business.
- We can provide unparalleled services that will keep your communications running in a manner that's consistent with your requirements.
- We'll be around to serve you. When a company weathers an industry's changes and "fickle fingers of fate," it's very likely this company will endure—and still be your provider for many years to come.
- We have an amazing array of products and services. AT&T is one of the world's leading data, voice, and Internet service providers, offering a full range of voice, data, networking and e-business services through world-class networks.

- We can offer you exceptional solutions because AT&T has the wherewithal to create new technology and invest in good employees. Why? Because the new AT&T is the largest telecommunications company in the United States and one of the largest in the world.
- AT&T features a variety of features and service options, extra attention and better service, quick responsiveness, full commitment to your satisfaction, and long-term accommodation for varied applications.
- You'll be one of the first to know about new versions of integrated communications and entertainment services because AT&T is setting the standard for these. Today, the new AT&T has IP-based (Internet Protocol) network capabilities, assets, and resources that are widely regarded as unsurpassed in the marketplace, enabling the company to lead the industry in using the language of the Internet to deliver innovative services that integrate voice, data and video. The combined IP assets of the new AT&T will enable innovations that neither the pre-merger SBC nor pre-merger AT&T could have accomplished on its own.
- AT&T earns more than \$70 billion in annual revenue and employs specialists with more technical certifications than almost any other company in the country. And, we use the best equipment. That's why we're the top U.S. provider of local, long distance, and DSL service and one of the world's leading providers of IP-based communications services for businesses. *Fortune* magazine has named AT&T the "World's Most Admired Telecommunications Company" for eight years in a row.
- We have it all—almost everywhere in the world. Consider the following statistics:
  - AT&T serves 54.2 million switched access lines, making it one of the top local telephone companies in the U.S.
  - AT&T is the top provider of DSL high-speed Internet service in the U.S., with 8.2 million DSL Internet subscribers. AT&T DSL Internet is now available to 32 million customer locations across the nation.
  - Cingular Wireless is owned by AT&T and is one of the top two wireless providers in the U.S., with more than 24.6 million customers.
  - The new AT&T provides services to virtually every country and territory in the world, with international voice service in 240 countries, linking 400 carriers, and offering remote access via 19,500 points of presence in 149 countries.

## **And, Finally...**

We hope that you'll choose AT&T as your provider. We will perform your work capably—and we'll provide the thorough support and enthusiastic follow-up that can really make a difference in the day-to-day business of running a school district.

Your job is education; ours is communications. We want to do ours well—so that you will have more time to devote to the important work of preparing Encinitas Union School District children for their lives as adults someday—in a fast-lane universe that is only growing more complex.

We *want* your business once again.



## **DELIVERING FUTURE COMMUNICATIONS FOR ENCINITAS UNION SCHOOL DISTRICT**

**AT&T Response to Encinitas Union's  
RFP for Fiber-Optic WAN Service**

**January 11, 2007**

Thomas Holland  
Senior Account Manager, AT&T  
101 W. Broadway  
San Diego, CA 92101  
619-237-3978  
th6341@att.com

**Proposal Validity Period**—The information and pricing contained in this proposal is valid for the funding period known as E-Rate Year 10. This pricing does not extend to other projects outside of E-Rate Year 10 unless extended in writing by SBC Global Services, Inc., d/b/a AT&T Global Services.

**Terms and Conditions**—Unless otherwise stated herein, this proposal is conditioned upon negotiation of mutually acceptable terms and conditions.

**Disclaimer**

For purposes of this Proposal, the identification of certain services as "eligible" or "non-eligible" for Universal Service ("E-rate") funding is not dispositive, nor does it suggest that this or any other services in this Proposal will be deemed eligible for such funding.

Any conclusions regarding the eligibility of services for E-rate funding must be based on several factors, many of which have yet to be determined relative to the proposed services and equipment described herein. Such factors will include, without limitation, the ultimate design configuration of the network, the specific products and services provisioned to operate the network, and the type of customer and whether the services are used for eligible educational purposes.

In its proposal, AT&T will take guidance from the "Eligible Services List" and the specific sections on product and service eligibility on the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") website [www.sl.universalservice.org](http://www.sl.universalservice.org). This site provides a current listing of eligible products and services, as well as conditionally eligible and ineligible services. This guidance notwithstanding, the final determination of eligibility will be made by the SLD after a review of Encinitas Union SD's e-rate application for this proposal.

If AT&T is awarded the bid for this project, AT&T will assist Encinitas Union SD for purposes of the e-rate application. This assistance will be provided solely on matters relative to the functionality of the services and products that comprise the network. Nevertheless, the responsibility for the e-rate application is with Encinitas Union SD. AT&T is not responsible for the outcome of the SLD's decision on these matters.

This proposal includes regulated telecommunications services which are necessarily offered solely subject to tariffs and terms as approved by the California Public Utilities Commission, and consistent with the AT&T contract forms attached to this response. AT&T takes exception to any terms in the RFP which are inconsistent with or which add to the AT&T contract and tariff terms. AT&T is willing to negotiate with customer in good faith for inclusion of any terms deemed important by customer, especially terms of compliance with applicable laws.

**Proposal Pricing**—Pricing proposed herein is based upon the specific product/service mix and locations outlined in this proposal, and is subject to the standard terms and conditions of Pacific Bell Telephone Company, dba AT&T California unless otherwise stated herein. Any changes or variations in Pacific Bell Telephone Company, dba AT&T California . standard terms and conditions and the products, length of term, services, locations, and/or design described herein may result in different pricing.

**Providers of Service**—Welcome to the new AT&T. The merger of SBC and AT&T was finalized on Friday, November 18, 2005 and we have adopted the AT&T name for our company. Pacific Bell Telephone Company, dba AT&T California , an AT&T company, is the respondent for this proposal for local services. Pacific Bell Telephone Company, dba AT&T California is referred to in this proposal as AT&T. In this document, the term "AT&T" may refer to the holding company, any of its subsidiaries (including combinations of them), or the AT&T brand.

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## Addendum I

### Request for Proposals: Fiber Optic Wide Area Network Service

#### E-Rate/RFP Contact Person

Carl E. Thompson, E-Rate Consultant  
Office: 916.852.0856  
Cell: 916.813.2549  
E-Mail: cthompson@eusd.net

#### EUSD Purchasing Department

Andrea Matusek, Purchasing Supervisor  
Office: 760.944.4300 / Ext: 1175  
E-Mail: amatusek@eusd.net

Vendor contact with District personnel is limited to the above, and the individual mentioned in A. 12 below.

#### AT&T Response:

AT&T understands.

**RFP Due Date:** Sealed proposals MUST be received by the Purchasing Supervisor not later than Thursday, January 11, 2007, at 10:00AM.

**Requested Service:** Provision of district-wide Fiber Optic Wide Area Network Service (F-WAN). F-WAN must provide 100Mbps of fixed bandwidth between the District Office (Network Hub), each of the District's nine (9) school sites, and the San Diego County Office of Education (SDCOE), the District's ISP. F-WAN must support Point - Point, Point - Multi-Point, and Multi-Point - Multi-Point service.

Refer to Appendices/Attachments for site locations, bandwidth requirements, schedule of costs, MDF locations, and E-Rate Form 470 (MDF drawings are not scaled and should only be used to identify MDF locations).

#### AT&T Response:

AT&T understands and will comply.

### A. Overview

*F-WAN* will improve network reliability by upgrading from copper based T-1 to broadband optical services.

*F-WAN* will provide a switched Ethernet wide area network (WAN). *F-WAN* must offer Layer 2 Ethernet connectivity for transparently interconnecting local area networks (LANs) throughout the District.

*F- WAN* features must include:

- a. 10/100 MB Ethernet physical connections at each of the nine (9) remote school sites and to SDCOE.

**AT&T Response:**

AT&T understands and will comply.

- b. At the District Office (DO), a single, 1 Gigabit Ethernet physical connection (Network Hub). This 1Gigabit connection shall act as a single user network interface upon which the Ethernet Virtual Circuit (EVC) connections to the nine (9) remote school sites will be multiplexed. The connection must be capable of supporting the 100MB connection between each of the remote school sites.

**AT&T Response:**

AT&T understands.

- c. The 10/100 MB connection to SDCOE shall not be multiplexed onto the 1 Gigabit Ethernet physical connection at the Network Hub (DO).

**AT&T Response:**

AT&T understands.

## **B. Basic Requirements / Conditions**

1. Responding vendors must be currently certified by the California Public Utilities Commission (CPUC) to provide services under the California Teleconnect Fund (CTF) program.



**AT&T Response:**

AT&T is certified by the California Public Utilities Commission (CPUC) to provide services under the California Teleconnect Fund (CTF) program.

- .2. Vendor product/service solutions must be currently eligible for CTF reimbursement.

**AT&T Response:**

AT&T's Opt-E-MAN services is eligible for the CTF reimbursement

3. Vendor must be E-Rate Certified and possess a valid Service Provider Identification Number (SPIN).

**AT&T Response:**

AT&T is E-Rate Certified and possess a valid Service Provider Identification Number

SPIN – 143002665 (Pacific Bell Telephone Company)

4. Vendor must offer three (3) and five (5) year contract options.

**AT&T Response:**

AT&T understands and will comply.

5. Vendor must have an Account Support Team and Maintenance/Repair Crew located within a 25 mile radius of the District Office.

**AT&T Response:**

AT&T's dedicated account team has offices in the AT&T building at 101. West Broadway in downtown San Diego. This dedicated team of telecommunications professionals support all aspects (ordering, implementation, billing etc.) of Encinitas Union School Districts telecommunication and business needs. AT&T has over 400 technicians in San Diego County which are dispatched patch from 10 local work locations.

Local AT&T Account Team Members, dedicated to supporting the Encinitas Union School District:

Senior Account Manager

Tom Holland – 7+ Years Experience  
Office: (619)237-3978  
PCS: (619)518-5770  
FAX: (619)237-2403  
E-Mail: tom.holland@sbc.com  
101 W. Broadway, Room 370  
San Diego, CA 92101

Overall Responsibility for providing you with the products and services you need to conduct your daily business, plan for the future and resolve service issues. Coordinates the activities of the account team. Your single point of contact if you don't know who else to call.

Technical Sales Executive

Antonia Daubek – 7+ Years Experience  
Office: (619)237-4078  
PCS: (619)300-3215  
E-Mail: ad1672@att.com  
101 W. Broadway, Room 370  
San Diego, CA 92101

Data Support – LAN/WAN design specialist. Extensive training and experience in network design. Antonia can assist you in assessing your data needs and design cost-effective solutions that meets your business specifications.

Data Network Consultant

David Blaylock – 10+ Years Experience  
Office: (619)237-2201  
PCS: (619)203-1854  
E-Mail: db2613@att.com  
101 W. Broadway, Room 370  
San Diego, CA 92101

Tier Two Technical Data Support – LAN/WAN design specialist. Extensive training, experience and certifications in data communications technologies. David will support you and the local account team in highly technical data needs and designs that meet your business requirements.

Service Representative

Joe Bourqui – 20+ Years Experience  
Office: (619)237-3343  
FAX: (619)544-0720  
E-Mail: xxxx@att.com  
101 W. Broadway, Room 300  
San Diego, CA 92101

Day-to-day Orders - Orders for Centrex, business lines, trunks, voice mail, features and moves or other changes to existing voice services.

Billing Representative

Nancy Bacallao – 25 Years Experience  
Office: (619)237-3765  
FAX: (619)544-0720  
E-Mail: nb2168@sbc.com  
101 W. Broadway, Room 300  
San Diego, CA 92101

Billing - Questions regarding statements and billing for all products and services.

6. Acceptance of service [by District] as described in this RFP is subject to availability of funding from E-Rate, CTF, and District sources.

**AT&T Response:**

This proposal includes regulated telecommunications services which are necessarily offered solely subject to tariffs and terms as approved by the California Public Utilities Commission, and consistent with the AT&T contract forms attached to this response. Please review the attached "Addendum to Master Agreement for Services and/or Products Subject to Universal Services ("E-rate") Funding document for terms and conditions in the event E-rate funding is terminated.

7. Vendor must provide detailed and summary costs per circuit/link for both initial and [future] incremental bandwidth: Installation /Recurring / Other.

**AT&T Response:**

AT&T understands and will comply

8. Prices must remain firm through the SLD approval process and duration of the proposed contract. In the event of a price decrease for service, the decrease shall be passed on to the District and documented with a new price sheet sent to EUSD - Purchasing Supervisor.

**AT&T Response:**

AT&T understands and will comply

9. Any vendor, who contacts an Encinitas Union School District Board of Education member during the RFP process, will be automatically disqualified from further consideration for the RFP award.

**AT&T Response:**

AT&T understands and will comply

10. The Board of Education reserves the right to reject any and all bids/proposals, or any or all items of any bid/proposal.

**AT&T Response:**

AT&T understands.

11. Vendors must submit their RFP response in both printed (3-copies) and electronic form {PDF format}.

**AT&T Response:**

AT&T understands and will comply.

12. Vendors must contact Gerry Devitt, Director, Maintenance and Operations (760.518.6890) to arrange for school site and District Office access.

**AT&T Response:**

AT&T understands and will comply.

13. F-WAN circuits must be terminated in the MDF at each school site and the District Office. Cable routing and installation of all circuits (including conduit) shall be the responsibility of the vendor. School site/District Office MDF location drawings are attached (MDF drawings are not scaled and should only be used to identify MDF locations). Pathway routing must be approved by Gerry Devitt, Director of Maintenance and Operations. Mr. Devitt may be reached at 760.518.6890.

**AT&T Response:**

At locations where AT&T currently has fiber optic cable and/or fiber terminating equipment, it is assumed that the Opt-E-MAN terminating equipment and point of demarcation shall be located in proximity to the existing fiber optic cable terminations. At sites without existing AT&T fiber optic cable, AT&T agrees install necessary structure, fiber optic cable, fiber termination equipment and specified router in the MDF at each site. MDFs shall be located as indicated on the attached site maps. AT&T is responsible for installing necessary backboards, electrical and ground facilities as needed. Encinitas Union Elementary School District shall be responsible for the identification, removal and/or abatement of Hazardous substances. .

## **C. Additional Requirements / Conditions**

1. How long has your firm been providing this type of service to organizations similar to the district.

### **AT&T Response:**

AT&T has been providing Broadband Data Service over Fiber Optic transport technologies for over 20 years. Although our OPT-E-MAN product is relatively new compared to some of our other Broadband Data Communications services, we have thousands of OPT-E-MAN end-point connections throughout our nationwide footprint, serving businesses and educational institutions, large and small.

AT&T's roots can be traced back to 1876, with Alexander Graham Bell's invention of the telephone and the founding of the company's forerunner. Today, AT&T is the largest telecommunications company in the United States and one of the largest in the world.

AT&T can offer Encinitas Union School District the unmatched resources, commitment and expertise. In addition to the buying power of such a company AT&T continues to recognize the unique requirement of Local Government which is evidenced by the staffing of local, dedicated account teams.

In November 2005, SBC Communications Inc. closed on its historic acquisition of AT&T Corp. to form the new AT&T Inc. This was the latest in a series of strategic investments in new technology, new markets and new products – combined with strong execution – that have transformed AT&T into a market leader.

### **Key Facts on the New AT&T Companies**

- One of the world's most advanced and powerful IP backbone networks, carrying 4.6 petabytes (4.9 billion megabytes) of traffic on an average business day to nearly every continent and country, with up to 99.999% availability.
- One of the world's largest providers of IP-based communications services for businesses, with an extensive portfolio of Virtual Private Network (VPN), Voice over IP (VoIP) and other offerings, all backed by innovative security and support capabilities.

- The new AT&T VoIP service portfolio is one of the most extensive in the market today, enabling enterprises to migrate seamlessly between VoIP and TDM services.
- The new AT&T is the only provider to deliver interoperability with the world's five leading IP PBX vendors (Cisco, Avaya, Nortel, Siemens, and Alcatel).
- No. 1 U.S. provider of broadband DSL—6.5 million lines in service—and a major Wi-Fi provider, making it a leader in delivering IP-based services to residential and small-business customers.
- Holds a 60 percent ownership of Cingular Wireless, which has 52.3 million customers and is the No. 1 U.S. wireless provider.
- No. 1 U.S. provider of local voice services.
- No. 1 U.S. provider of long distance voice services.
- World's largest directory publisher, delivering 110 million directories a year and publishing more than 700 different directories in 13 states, as well as online.
- World leader in transport and termination of wholesale traffic and recognized by numerous industry experts for its industry-leading wholesale services portfolio.

Those are just a few of the reasons why Fortune magazine named our company America's Most Admired Telecommunications Company in 2006.

The most visible change, of course, was our decision to adopt the widely recognized and respected AT&T brand for the combined company. While SBC was a great brand, AT&T was the right choice to position us as a premier global brand.

We have a great new company, with a 130-year history of innovation and a future filled with opportunity. So, it would be fair to ask what we are going to do with it.

We will continue to develop the most advanced and reliable networks, applications and services available anywhere in the world. That is what we do best. The key to our latest transformation is Internet Protocol – or “IP,” the language of the Internet. IP is revolutionizing how we gather and share information at work, listen to music or watch video at home and stay in touch with our families from the road. Add wireless to the equation and an airport terminal becomes your office, or a picnic table at a park becomes your living room.

2. Submit company and contact person names for three (3) organizations using similar services provided by your firm for three (3) or more years.

**AT&T Response:**

**Three Local References:**

Account Name	San Dieguito Union High School District
Address	710 Encinitas Blvd., Room 203 Encinitas, CA 92024
Contact Person/Title	Mike Coy, Director of Educational Technology
Phone Number	(760) 753-6491 x5549
Years Providing Service and aprox. circuit volume	Service just installed October 2006 10 sites

Account Name	San Diego County Office of Education
Address	6401 Linda Vista Rd, San Diego, CA 92111
Contact Person/Title	John Cusack/ Network Services Manager.
Phone Number	858-571-7232
Years Providing Service and aprox. circuit volume	Providing Services for 2 years; 1 site connecting to the Internet

Account Name	Riverside Unified School District
Address	3380 14 <sup>th</sup> Street
Contact Person/Title	Mike Fine, Superintendent of Business Services
Phone Number	951-352-6729
Years Providing Service and aprox. circuit volume	Providing service for 18 months 40+ sites

3. Provide an expansive conceptual-functional description of your proposed service solution.

**AT&T Response:**

OPT-E-MAN<sup>SM</sup> is a public, switched Ethernet solution that connects separate LANs across a metropolitan area. OPT-E-MAN provides a fully managed service that uses optical transport.

OPT-E-MAN builds on the strengths of our network with Cisco equipment to provide you with scalable optical service within the metropolitan area. This service provides flexible bandwidth options, from 5 Mbps to 1 Gbps, to help you meet your growing Ethernet application needs.

OPT-E-MAN supports many transport data configurations (point-to-point, point-to-multipoint, multipoint-to-multipoint). It uses physical and virtual connections to satisfy your specific business requirements.



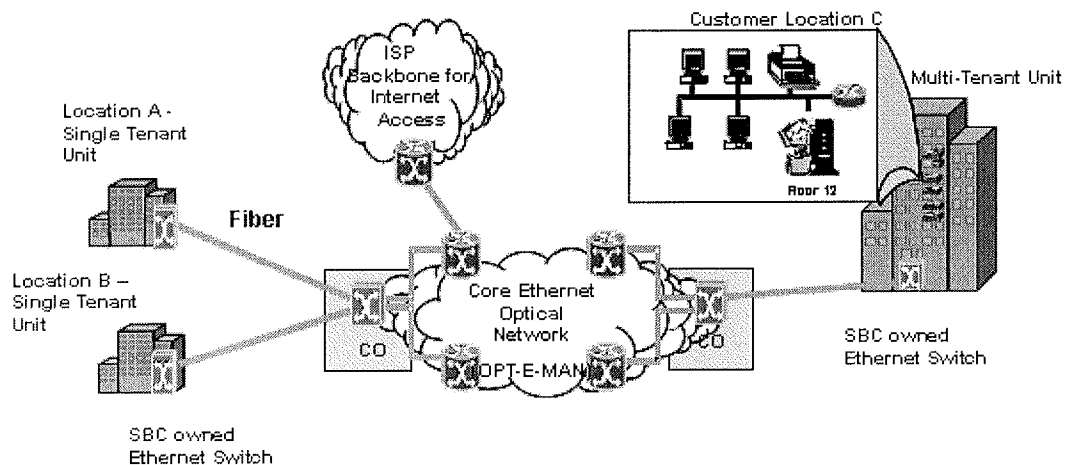
OPT-E-MAN offers you the ability to have multiple locations communicate with each other using a pure Ethernet solution, which supports many different types of business applications.

OPT-E-MAN service offers leading-edge Service Level Agreements (SLAs) that ensure you receive the reliability you require for your metro area network. With our SLAs, you can feel confident about the quality of your network and our services.

## How It Works

OPT-E-MAN uses Ethernet LAN packets that run over optical fiber to the Internet or your intraLATA network. The fiber transport connects to network terminating equipment at your location, and you connect to the service using a router, bridge, or switch.

Figure 1 presents an overview of the AT&T optical Ethernet environment.



**Figure 1: The AT&T Optical Ethernet Environment**

With OPT-E-MAN, you can connect any two or more locations, as long as they are in the same LATA or metropolitan area network (MAN) and OPT-E-MAN service is available. To connect enterprise locations, optical transport provides the physical layer connectivity between your stand-alone locations and a location in a multi-tenant unit (MTU).

OPT-E-MAN allows you to connect to the Ethernet network via one of the following standard network interfaces:

- 100BASE-T



- 1 Gbps Ethernet port (1000BASE-SX, 1000BASE-LX/LH, or 1000BASE-ZX)

OPT-E-MAN service includes the transport from your site to the Ethernet network, a port on the Ethernet network, and an assigned bandwidth usage. Your assigned bandwidth usage includes a Committed Information Rate (CIR) and one or more Ethernet Virtual Connections (EVCs).

To implement OPT-E-MAN, we place Cisco network terminating equipment (Cisco 3550 or 3570 Catalyst Switches provided at this time) at your site, and we use Cisco 7609 equipment at the Central Office. We provision logical point-to-point connections based on your traffic flow, applications, prioritization, and preferred bandwidth configurations. You can provision multiple EVCs over one physical connection (known as VLAN-based service) or a single EVC per physical connection (known as port-based service).

### **What is VLAN-based Service?**

VLAN-based service (also known as service multiplexing) is an efficient and cost effective way to use OPT-E-MAN service because it enables you to provision multiple EVCs over one physical connection. For Basic service, you can provision up to eight EVCs per 10/100BASE-T port and up to 64 EVCs per 1 Gbps port. For Basic Plus service, you can provision up to seven EVCs per 10/100BASE-T port and up to 63 EVCs per 1 Gbps port.

To implement VLAN-based service, we assign a VLAN ID to each EVC to uniquely identify it, and we coordinate with you to ensure the VLAN IDs are properly configured.

Using the IDs, you can establish VLAN groups across the core network, and you can segregate and prioritize your traffic. For example, you can separate finance traffic from marketing traffic. VLAN-based service also allows you to hand off tagged traffic to application service providers or storage service providers.

The following are characteristics of VLAN-based service:

- EVCs are point-to-cloud and are connected in the core by an MPLS tunnel to their corresponding EVC.
- EVCs are service multiplexed over a single physical port using 802.1Q tags.
- Service is opaque to customer Protocol Data Units (PDUs) such as Bridge Protocol Data Units (BPDUs).
- Logical service configuration can be either hub and spoke or fully meshed.

- A router is recommended as a CPE edge device.
- Up to 100 MAC addresses are supported per port.
- Customer traffic shaping is required if CIR is less than the network interface.

## **What is Port-based Service?**

With port-based service, you can hand off tagged or untagged traffic without separating the traffic into individual VLANs. The service accepts all traffic and places it in a network-based VLAN. This process is transparent to those using double VLAN tagging (802.1Q tagging), and the traffic inside this network-based VLAN is transparent to SBC.

So, you receive true virtual, point-to-point, port-based service (an Ethernet virtual private line).

The port-based configuration places all your traffic in one EVC, and we do not assign VLAN IDs to the EVCs. You would use port-based service primarily for your additional locations or for Dedicated Internet Access (DIA) transport.

The following are characteristics of port-based service:

- Service multiplexing is unavailable.
- The process is transparent to customer BPDUs.
- Routers and switches can safely connect.
- Fifty MAC addresses (or up to 100 for an extra charge) are supported per port.
- Customer traffic shaping is recommended.

## **What are the Components?**

OPT-E-MAN uses these components:

- Ethernet Port, Transport, and Interface—come from the network terminating equipment at your location
- Ethernet Virtual Connection (EVC)—crosses the physical connection and the Ethernet cloud

## **Options**

Opt-E-MAN is available in two Grades of Service (QoS) Bronze and Silver. The Grades of Service are associated with the Bandwidth Usage Rate (CIR) ordered by you for each connection at your locations.

If multiple EVCs are requested per location, then a Grade of Service will be associated with each EVC.

### **Bronze Grade of Service:**

The applications best suited for this Grade of Service are data applications with more tolerance for delay and/or those that are lower in priority. This Grade of Service is the appropriate selection for LAN traffic since it tolerates bursty and time-varying traffic.

The service parameters associated with this Grade of Service are Packet Delivery Rate (PDR) and Latency.

- Packet Delivery Rate guarantee for Bronze Grade of Service is 99.5% of total traffic.
- Latency guarantee for Bronze Grade of Service is <35 ms one way, end-to-end (70 ms roundtrip).

### **Silver Grade of Service:**

Supports applications that require minimal loss and low latency variation (jitter) such as VoIP. Data in this Class of Service will be provisioned in a priority queue indicating that it is delay sensitive. The service parameters associated with this Class of Service are Packet Delivery Rate (PDR), Latency and Jitter.

- Packet Delivery Rate guarantee for Silver Grade of Service is 99.9% of total traffic.
- Latency guarantee for Silver Grade of Service is <25 ms one way, end-to-end (50 ms roundtrip).

Jitter guarantee for Silver Grade of Service is 15 ms one way, end-to-end.

## **OPT-E-MAN Benefits?**

OPT-E-MAN is a widely available, well-understood technology that simplifies your network operations. With this cost-effective technology, you can scale bandwidth within

days instead of weeks. You also can benefit from the widespread use of Ethernet interfaces and purchase bandwidth only when you need it..

OPT-E-MAN gives you these features:

**Competitive Pricing**—Priced at 15-20% less than similar services, OPT-E-MAN provides greater bandwidth levels and equivalent contract terms. OPT-E-MAN offers you a known protocol that reduces the operational costs of training, maintenance, and equipment.

**24x7 Management Center**—An Enhanced Network Operations Center (ENOC) provides 24- hour management and monitoring of your service. This reduces your management responsibilities and service costs because we handle the work ourselves.

**Optical Ethernet Access**—Optical Ethernet offers seamless, flexible connections between multiple locations within a metropolitan area. It provides you with high-speed information transport by scaling to LAN speeds ranging from 5 Mbps to 1 Gbps and supports distances of up to 50km.

4. Describe the core network infrastructure that supports your service.

**AT&T Response:**

AT&T has built out an Ethernet over MPLS (EoMPLS) core network. EoMPLS is not an application but is the technology/protocol that AT&T is using to support customers' applications that will be sent across the network.

By using MPLS, AT&T provides a high level of security for customer's traffic and offers enhanced Grade (Quality) of Service parameters.

5. Describe the method and technology you use to interconnect multiple locations to a single host location.

**AT&T Response:**

OPT-E-MAN is a fiber-based Layer 2 switched Ethernet service. The OPT-E-MAN® Basic service configuration provides a switched, logical point-to-point or point-to-multipoint connection between customer locations using a physical connection to the network, and virtual connections through the OPT-E-MAN® network.

An Ethernet Virtual Circuit (EVC) is a logical point-to-point connection between two or more customer locations and goes from the customer demarcation point (Ethernet

Interface) through the AT&T OPT-E-MAN® network and out to another customer demarcation point.

Additional EVCs may be provisioned to establish additional virtual connections over the same physical connections. When additional EVCs are provisioned, the customer must designate the portion of the CIR bandwidth on that network interface to be assigned to each EVC. If the customer selects the Silver Grade of Service, the initial EVC will be prioritized as Silver. Additional EVCs can be prioritized as either Silver or Bronze.

If the customer selects the Bronze Grade of Service, additional EVCs will only be prioritized as Bronze. CIR is a statistical level of transmission or bandwidth that the network will provide. CIR is assigned to the port on the Network Terminating Equipment (NTE). If the customer wants more than 1 EVC on a port, then the CIR will need to be shared among the multiple EVCs.

6. Provide detailed descriptions and network diagrams of your proposed network solution.

**AT&T Response:**

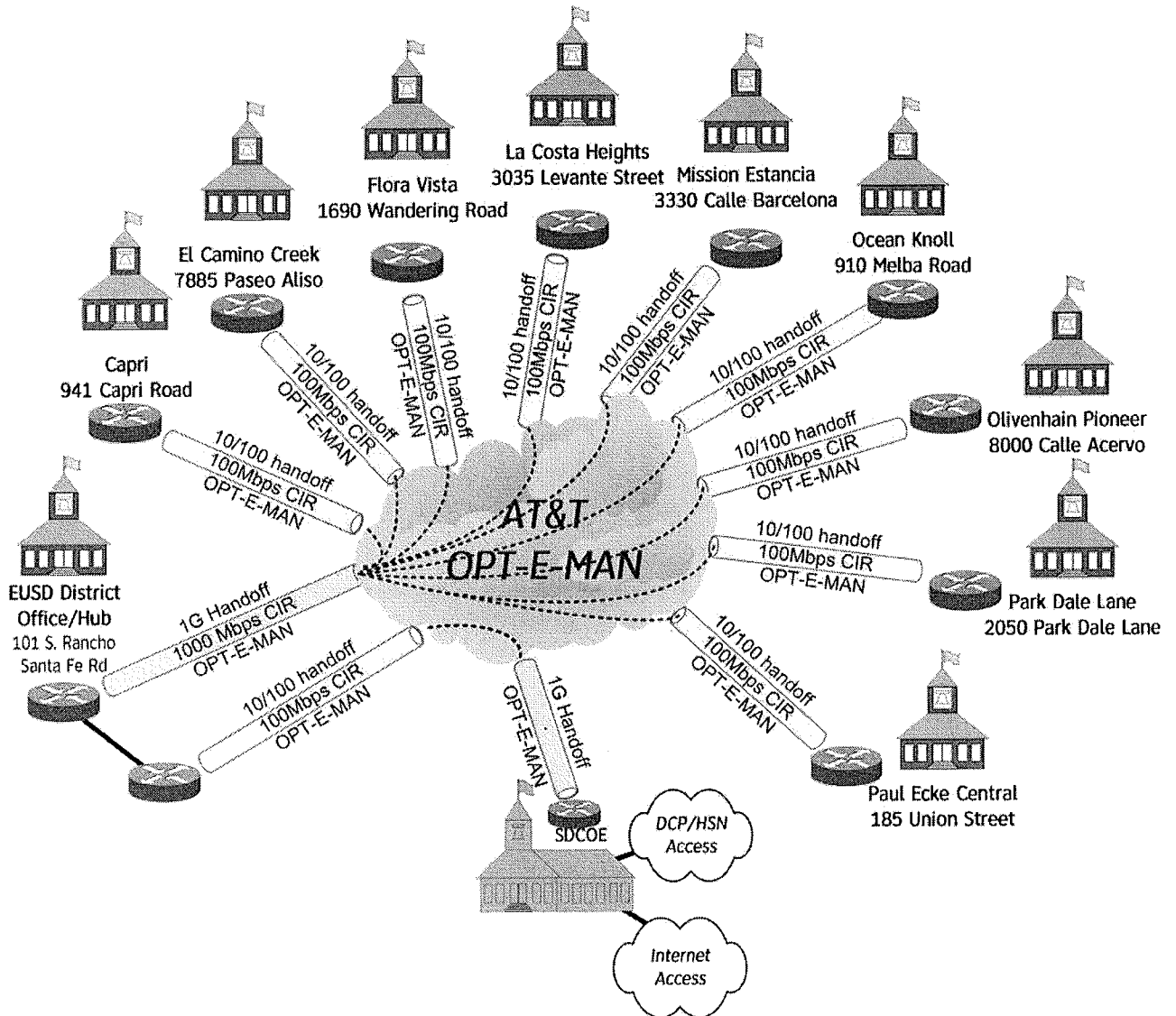
AT&T will install a 10/100Mbps connection with an Ethernet Physical Handoff at the district office. This circuit will act as your primary Internet Connection to the San Diego County Office of Education with a 100Mbps Committed Information Rate and a single Ethernet Virtual Circuit pointing to an existing OPT-E-MAN Host Circuit at SDCOE.

AT&T will also install a 1000Mbps connection with a 1 Gbps Ethernet physical handoff at the district office. This circuit will act as a host circuit to accept connections from your 9 remote school campuses.

At each remote School Campus, AT&T will install a 10/100Mbps connection with Ethernet Physical Handoff with a 100Mbps Committed Information Rate. A single Ethernet Virtual Circuit will be created pointing back to the host 1000Mbps circuit at the District Office.

This point-to-point and point-to-multipoint design allows for the most cost effective and best use of your Wide Area Data Network.

Encinitas USD Proposed Network Diagram:



7. Describe in detail your Service Level Guarantees/Agreements (SLG/A) specific to Network Availability, Packet Delivery, Latency, and Jitter.

**AT&T Response:**

AT&T offers service guarantees for OPT-E-MAN as detailed in the tariffs.

There is a Network Availability SLA for the actual Basic Connection and then Packet Delivery Rate, Latency and Jitter SLAs for the Bandwidth Usage (EVC's) depending on the Grade of Service selected. There will also be an outage credit available with the service in the instance that the service is interrupted because of local phone company negligence. Specific SLAs are listed in the state and Federal tariffs.

**Network Availability**

AT&T is committed to maintaining a network availability of 99.95% per month including the local loop. Network Availability is calculated as the percentage of time that the OPT-E-MAN® network is capable of accepting and delivering customer data to the total time in the measurement period. The calculation for Network Availability for a given calendar month is as follows:

Network Availability =

$$\frac{[24 \text{ hours} \times \text{days in month} \times 60 \text{ minutes} \times \text{number of customer sites}] - \text{network outage time (measured in minutes)}}{[24 \text{ hours} \times \text{days in month} \times 60 \text{ minutes} \times \text{number of customer sites}]}$$

- As noted in the above formula, all ports included in a customer's network are utilized in calculating *Network Availability*.
- The customer is responsible for (1) notifying the Company within 45 days after the end of the month when the service parameter within the calendar month falls below the committed level, and (2) requesting a service credit.
- Upon verification by the Company that the actual service performance for that parameter was less than the committed level, the customer will be provided a service credit equal to 10% of the monthly recurring charge for that service parameter for all affected ports.



Service configurations include a choice of one of two underlying Grades of Service: Bronze and Silver. Each Grade of Service offers a different level of service performance. The following describes the service parameters for each Grade of Service.

### **Packet Delivery Rate(PDR)**

Packet Delivery Rate (PDR) is a measurement of the actual amount of useful and nonredundant information that is transmitted or processed from end-to-end across the network. It is a function of bandwidth, error performance, congestion and other factors. PDR is expressed as a percentage of Ethernet frames offered to the network that successfully traverse the network, end-to-end, within the CIR, and within a 30 day period. PDR is calculated as the total number of effective Ethernet frames, per port, that successfully traverse the network divided by the total number of effective Ethernet frames, per port, offered to the network within a 30 day period. Those frames that violate the maximum range will be excluded from the calculation. PDR is measured by averaging sample measurements taken during a 30 day period from network terminating equipment to network terminating equipment to which the customer ports are attached when the OPT-E-MAN network is available.

### **Latency**

Latency is the amount of time necessary for a typical frame to traverse the network. Latency is calculated as the measurement of time taken for a customer frame to go from one end of the network (origination point) to the other end (termination point).

The measurement will consist of measuring the time it takes to “ping” or travel from the origination to termination ports for the connection in question. Latency is measured by averaging sample measurements taken during a 30 day period between network terminating equipment to which the customer ports are attached when the OPT-E-MAN® network is available.

### **Jitter**

Jitter is the delay that occurs between 2 packets or Ethernet frames that are traversing the network. Jitter is calculated as the delay variance of the packets transported across the network or the delta of delay between two consecutive packets. It is measured between two endpoints, and will consist of measuring the time between a set of packets. Jitter is measured by averaging sample measurements taken during a 30 day period between



network terminating equipment to which the customer ports are attached when the OPT-E-MAN® network is available.

## Grades of Service Definitions and SLAs

### *Bronze*

The applications best suited for this Grade of Service are general data applications with more tolerance for delay and/or those that are lower in priority. This Grade of Service is the appropriate selection for general data traffic since it tolerates bursty and timevarying traffic. The service parameters associated with this Grade of Service are Packet Delivery Rate (PDR) and Latency.

Packet Delivery Rate is at least 99.5% of total traffic from source Network Terminating Equipment (NTE) to the destination NTE to which the customer port is attached.

Latency is limited to a delay across a connection of no more than 27 ms (54 ms roundtrip) one-way end-to-end within the Company's network for packets 1500 bytes or less.

### *Silver*

This Grade of Service supports applications that require minimal loss and low latency variation (jitter). Data in this Grade of Service will be provisioned in a priority queue indicating that it is delay sensitive. The service parameters associated with this Grade of Service are Packet Delivery Rate (PDR), Latency and Jitter.

Packet Delivery Rate is at least 99.9% of total traffic from source Network Terminating Equipment (NTE) to the destination NTE to which the customer port is attached.

Latency is limited to a delay across a connection of no more than 18 ms (36 ms roundtrip) one-way end-to-end within the Company's network for packets 1500 bytes or less.

Jitter is limited to less than 12 ms one-way end-to-end within the Company's network.

8. What are the penalties to be assessed against your firm for failing to meet SLG/A's?

**AT&T Response:**

**Reporting and Remedies for Grades of Service**

Per the tariffs, Grade of Service SLAs are provided for OPT-E-MAN Service. If AT&T fails to meet service parameters defined for each Grade of Service, a service credit will be offered to the customer given certain conditions are met:

- The customer is responsible for (1) notifying AT&T within 45 days after the end of the month when the service parameter falls below (or above) the committed level, and (2) requesting a service credit.
- Upon notification by the customer that the actual service performance for that parameter was less than the committed level, AT&T has 30 days to correct the problem.
- If after 30 days, the service performance for that parameter is still less than the committed level, the customer will be provided a service credit equal to 25% of the monthly recurring charge for that service parameter for all affected ports for the month in which the service parameters fall below (or above) the committed level.
- Packet Delivery Rate, Latency and Jitter calculations will be measured only when the OPT-E-MAN ® network is available.

**Exclusions for all SLAs**

AT&T will be excluded from providing Service Level Agreements credits and Grade of Service credits should any of the following conditions occur:

- Force major events such as, but not limited to, an earthquake, hurricane, flood, fire, storms, tornadoes, explosion, lightning, power surges or failure, fiber cuts, strikes or labor disputes. Loss or damage resulting from any cause beyond the Company's reasonable control such as acts of war, civil disturbances, acts of civil or military authorities or public enemy.
- All SLAs are offered across AT&T's network. The failures of any components beyond the local facility including the Network Interface (NI), the CSU/DSU/Channel band/Extended Demarcation are excluded from the SLA calculation.
- Data loss during the Company's scheduled maintenance window.
- Data exceeding subscribed Usage.

- Failures attributed to facilities or equipment provided by customer or its contractors, equipment vendors, another local exchange carrier or interexchange carrier.
- Any type of Customer Network Management functionality is not included in SLAs.

9. How are SLG/A penalties triggered?

**AT&T Response:**

The customer is responsible for notifying AT&T within 45 days after the end of the month when Network Availability falls below the committed level and requesting a service credit.

10. How do you provide Quality of Service (QoS)?

**AT&T Response:**

Opt-E-MAN is available in two Grades of Service (GoS), Bronze and Silver.

The Grades of Service (Silver or Bronze) are associated with the Bandwidth Usage Rate (CIR) ordered by you for each connection at your locations. (see our response to question #7 above for details on our QoS features)

11. Describe and list your QoS levels and their specifications.

**AT&T Response:**

Opt-E-MAN is available in two Grades of Service (QoS), Bronze and Silver.

The Grades of Service are associated with the Bandwidth Usage Rate (CIR) ordered by you for each connection at your locations.

If multiple EVCs are requested per location, then a Grade of Service will be associated with each EVC.

Bronze Grade of Service: The applications best suited for this Grade of Service are data applications with more tolerance for delay and/or those that are lower in priority.

This Grade of Service is the appropriate selection for LAN traffic since it tolerates bursty and time-varying traffic. The service parameters associated with this Grade of Service are Packet Delivery Rate (PDR) and Latency.

- Packet Delivery Rate guarantee for Bronze Grade of Service is 99.5% of total traffic
- Latency guarantee for Bronze Grade of Service is <35 ms one way, end-to-end (70 ms roundtrip)

Silver Grade of Service: Supports applications that require minimal loss and low latency variation (jitter). Data in this Class of Service will be provisioned in a priority queue indicating that it is delay sensitive. The service parameters associated with this Class of Service are Packet Delivery Rate (PDR), Latency and Jitter.

- Packet Delivery Rate guarantee for Silver Grade of Service is 99.9% of total traffic
- Latency guarantee for Silver Grade of Service is <25 ms one way, end-to-end (50 ms roundtrip)
- Jitter guarantee for Silver Grade of Service is 15 ms one way, end-to-end

**AT&T's proposed design and costs are based on all EVCs being provisioned at the Silver Grade of Service.**

12. Describe in detail how your proposed service solution is monitored and managed. List tasks and activities. If your proposed service solution is not monitored and managed, please explain why.

**AT&T Response:**

The OPT-E-MAN service will be monitored 24 x 7 x 365 by the AT&T Enhanced Network Operations Center (ENOC) to provide an added level of security and reliability to the product. This reduces your management responsibilities and service costs because we handle the work ourselves. The ENOC will be the first point of contact for the customer in cases of trouble.

Customers can contact the ENOC via email at [ENOC@att.com](mailto:ENOC@att.com) or via telephone at 1-888-644-ENOC (3662).

13. Are you offering Bandwidth Options/Increments (BOI)?

**AT&T Response:**

No

AT&T Opt-E-MAN service does offer the following bandwidth increments for the OPT-E-MAN service: 5Mb, 10Mb, 20Mb, 50Mb, 100Mb, 250Mb, 500Mb and 1Gb.

Please note, that the design specified in this RFP precludes any increasing bandwidth to the remote sites as each 10/100 Base T circuit will be provision with a maximum 100Mb CIR upon installation.

14. What is the physical handoff provided by your terminating equipment?

**AT&T Response:**

OPT-E-MAN allows you to connect to the Ethernet network via one of the following standard network interfaces:

- 100BASE-T
- 1 Gbps Ethernet port (1000BASE-SX, 1000BASE-LX/LH, or 1000BASE-ZX)

15. If answer to item 13 is yes, describe the process/cost to increase bandwidth on individual circuits.

**AT&T Response:**

Not applicable

**AT&T Response:**

The customer CPE can be a switch, bridge or router. To provide Layer 3 (IP) connectivity, necessary rate shaping and other features, AT&T recommends that Encinitas connect to the Opt-E-MAN network using routers.

**MAC Address Limitations**

If the Encinitas chooses to connect to the OPT-E-MAN network using a bridge or switch for Layer 2 connectivity, a total of 50 MAC addresses can be utilized per Layer 2 device,

per port. Any additional MAC addresses will be assessed an additional charge, with a limit of 100 MAC addresses total per port.

To provide Layer 3 (IP) connectivity, thereby eliminating the MAC address limitation and allowing for IP traffic shaping, and other additional features, AT&T recommends Encinitas USD use a router to connect to our OPT-E-MAN service.

17. Are your proposed Ethernet solutions compliant with the Metro Ethernet Forum's (MEF) global Carrier Ethernet Service (CES) definitions?

**AT&T Response:**

AT&T's Opt-E-MAN product is fully compliant with the Metro Ethernet Forum's global Carrier Ethernet Service definition. AT&T is a Certified by the Metro Ethernet Forum as a Service Provider of Carrier Ethernet Services.

18. Describe your trouble reporting and escalation procedures.

**AT&T Response:**

The OPT-E-MAN service will be monitored 24 x 7 x 365 by the Enhanced Network Operations Center (ENOC) to provide an added level of security and reliability to the product. This reduces your management responsibilities and service costs because we handle the work ourselves.

The ENOC will be EUSD's first point of contact for the customer in cases of trouble.

Customers can contact the ENOC via email at [ENOC@att.com](mailto:ENOC@att.com) or via telephone at 1-888-644-ENOC (3662).

As stated in the tariff, the SLA for Mean Time to Repair for OPT-E-MAN is 4 hours, end-to-end, including the local loop, per month.

If you are not completely satisfied, contact your Account Manager, Tom Holland for escalation of trouble issues.

Telephone Number: 619-237-3978 Email Address: [tom.holland@att.com](mailto:tom.holland@att.com)

19. Describe your hours of operation and procedures for help/trouble reporting/maintenance support.

**AT&T Response:**

See our previous answer to Question #18 above.

20. Appendices:

**Site Location /Bandwidth Requirements - Appendix A**

School/Site Name	Street Address	City/State/Zip	Connection	Bandwidth
District Office	101 S. Rancho Santa Fe Rd	Encinitas, CA 92024	1000 Base SX	1Gbps
Capri	941 Capri Road	Encinitas, CA 92024	10/100 Base T	100Mbps
El Camino Creek	7885 Paseo Aliso	Carlsbad, CA 92009	10/100 BaseT	100Mbps
Flora Vista	1690 Wandering Road	Encinitas, CA 92024	10/100 Base T	100Mbps
La Costa Heights	3035 Levante Street	Carlsbad, CA 92009	10/100 Base T	100Mbps
Mission Estancia	3330 Calle Barcelona	Carlsbad, CA 92009	10/100 Base T	100Mbps
Ocean Knoll	910 Melba Road	Encinitas, CA 92024	10/100 Base T	100Mbps
Olivenhain Pioneer	8000 Calle Acervo	Carlsbad, CA 92009	10/100 Base T	100Mbps
Park Dale Lane	2050 Park Dale Lane	Encinitas, CA 92024	10/100 Base T	100Mbps
Paul Ecke Central	185 Union Street	Encinitas, CA 92024	10/100 Base T	100Mbps
SDCOE*	6401 Linda Vista Rd	San Diego, CA 92111	10/100 Base T	100Mbps



**Bandwidth Requirements / Schedule of Costs - Appendix B**

**AT&T 3 Year Contract Term Pricing:**

School/Site Name		Connection				Bandwidth		
		Install	Monthly	Other		Install	Monthly	Other
District Office	1000 Base SX		\$1180.06		1Gbps		\$2,439.50	
Capri	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
El Camino Creek	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
Flora Vista	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
La Costa Heights	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
Mission Estancia	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
Ocean Knoll	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
Olivenhain Pioneer	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
Park Dale Lane	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
Paul Ecke Central	10/100 Base T		\$893.06		100Mbps		\$1,148.00	
SDCOE*	10/100 Base T		\$538.00		100Mbps		\$1,148.00	
<b>Total Costs</b>			<b>\$9,750.60</b>				<b>\$ 13,919.50</b>	

**AT&T 5 Year Contract Term Pricing:**

School/Site Name	Connection	Bandwidth						
		Install	Monthly	Other		Install	Monthly	Other
District Office	1000 Base SX		\$779.95		1Gbps		\$1,904.00	
Capri	10/100 Base T		\$603.95		100Mbps		\$896.00	
El Camino Creek	10/100 Base T		\$603.95		100Mbps		\$896.00	
Flora Vista	10/100 Base T		\$603.95		100Mbps		\$896.00	
La Costa Heights	10/100 Base T		\$603.95		100Mbps		\$896.00	
Mission Estancia	10/100 Base T		\$603.95		100Mbps		\$896.00	
Ocean Knoll	10/100 Base T		\$603.95		100Mbps		\$896.00	
Olivenhain Pioneer	10/100 Base T		\$603.95		100Mbps		\$896.00	
Park Dale Lane	10/100 Base T		\$603.95		100Mbps		\$896.00	
Park Dale Lane	10/100 Base T		\$603.95		100Mbps		\$896.00	
Paul Ecke Central	10/100 Base T		\$603.95		100Mbps		\$896.00	
SDCOE*	10/100 Base T		\$368.00		100Mbps		\$896.00	
<b>Total Costs</b>			<b>\$6,583.46</b>				<b>\$10,864.00</b>	

*Note: Cost information must be submitted in the above format.*

*\* San Diego County Office of Education (SDCOE)*

**AT&T Response:**

All prices/costs above are exclusive of taxes, regulatory fees and surcharges. Taxes, regulatory fees and surcharges may change over the term of the contract due to regulatory changes. All prices provided above shall be honored for the term of the contract.

## D. Miscellaneous General Conditions

1. **BID FORM REQUIREMENTS.** The Bidder shall indicate on the Bid Form the unit price for each item listed and the total price for furnishing the total quantity of each item. All prices and notations must be typed or written in ink. Bids shall not be written in pencil. Mistakes may be crossed out and corrections inserted adjacent, but the correction shall be initialed in ink by the person signing the proposal. No corrections can be made after the time for opening bids.

### AT&T Response:

AT&T understands.

2. **ACCEPTANCE OR REJECTION OF BIDS/PROPOSALS.** The Board of Education reserves the right to reject any and all bids/proposals, or any or all items contained therein, or waive any irregularity associated with any item contained therein. No bid/ proposal may be withdrawn for a period of ninety (90) days without the prior written approval of the District

### AT&T Response:

AT&T understands.

3. **FEDERAL OR STATE REGULATIONS.** The proposal and any contract entered into are subject to all applicable statutes of the United States or of the State and all applicable regulations and orders of the Federal or State governments now in effect or which shall be in effect during the period of such contract.

### AT&T Response:

AT&T understands and complies.

4. **ASSIGNMENT PROHIBITED.** No contract awarded under this proposal shall be assigned without the approval of the Board of Education. Any attempted assignment in violation of the provision shall be voidable at the option of the Board of Trustees.

**AT&T Response:**

AT&T understands.

5. **PATENT RIGHTS, COPYRIGHTS, AND TRADEMARKS.** The Bidder shall save, keep, bear harmless, and fully indemnify the District, its officers or agents from all damages, or claims for damages, costs, or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights, copyrights, or trademarks of any person in consequence of the use by the District, or by any of its officers or agents of items to be supplied by the Bidder.

**AT&T Response:**

Copyright Notice and Statement of Confidentiality—© 2006 AT&T Knowledge Ventures. All rights reserved. AT&T and the AT&T logo are registered trademarks of AT&T Knowledge Ventures. The contents of this document are unpublished, proprietary, and confidential and may not be copied, disclosed, or used, in whole or in part, without the express written permission of AT&T Knowledge Ventures or affiliated companies, except to the extent required by law and insofar as is reasonably necessary in order to review and evaluate the information contained herein.

6. **DELIVERY.** All items shall be delivered in quantities specified in the contract F.O.B., at the points within the Encinitas Union School District as specified in the contract. Deliveries in advance of the time specified in the contract shall not be accepted unless the Bidder has obtained prior approval from the District. Unless otherwise specified, if an item is not delivered as specified in the contract or if the Bidder delivers an item which does not conform to the Specifications, the Board of Trustees may, at its option, annul and set aside the contract, either in whole or in part, and may enter into a new contract in accordance with law for furnishing such item. Any additional cost or expense incurred by the District in the making of such contract or any additional cost of supplying an item by reason of the failure of the Bidder, as described in this paragraph, shall be paid by the Bidder or his surety.

**AT&T Response:**

AT&T understands and will comply

7. **INSPECTION OF ITEMS FURNISHED.** All items furnished shall be subject to inspection and rejection by the District for defects or non-compliance with the specifications. The cost of inspection on deliveries or offers for delivery which do not meet spec's may be deducted from the contract price.

**AT&T Response:**

AT&T understands and will comply

8. **INABILITY TO PERFORM.** In the event that Bidder is prevented from making delivery or otherwise performing on time as specified in the contract by fire, flood, earthquake, labor or transportation problems, war, acts of government, or any other similar cause commonly known as an act of God, which is not the fault of the Bidder, the Bidder shall not be required to deliver or perform, subject to the following requirements:
- a. The Bidder shall send written notice to the District of the Bidder's inability to perform in accordance with the contract. The notice shall contain all facts which show the condition which prevents performance. The Bidder shall send such notice as soon as possible but in no event later than the fifth (5th) day following the date of issuance of a purchase order by the District or no later than the date specified in the contract for delivery or other performance, whichever is applicable.
  - b. The District may cancel the contract or purchase order, entirely or in part.
  - c. The Bidder shall not make any delivery or otherwise attempt to perform under the contract except on the basis of issuance by the District of a new purchase order or other written instruction.

**AT&T Response:**

AT&T understands and will comply

9. **WARRANTY-PRODUCT.** Seller warrants that all articles furnished shall be free from all defects of material and workmanship, that all articles shall be fit and sufficient for the purposes intended, and shall save, keep, bear harmless and fully indemnify the District it's officers, employees or agents from all damages, or claims for damages, costs or expenses in law or equity that may at any time arise from Buyers normal use.

AT&T Response:

AT&T understands and will comply

10. EQUAL OPPORTUNITY EMPLOYMENT. Bidder, in submitting his proposal certifies that he is an Equal Opportunity Employer, and certifies that he is in compliance with the Civil Rights Act of 1964, the State Fair Employment Practice Act, and all other applicable Federal and State laws and regulations relating to equal opportunity employment, including Executive Order No. 11246 of September 24, 1965.

AT&T Response:

AT&T understands and complies.



Signature

January 10, 2007

Date

TOM HOLLAND

Printed Name

SENIOR ACCOUNT MANAGER

Title

AT&T

Service Provider Company Name

## Master Agreement

This Master Agreement (the "Agreement") is between SBC Global Services, Inc. dba AT&T Global Services, a Delaware corporation with offices at One AT&T Plaza, Dallas, Texas 75202, on behalf of itself and those Affiliates identified in those Addenda, Attachments, Orders, and/or SOWs that may be entered into from time to time and incorporated by reference into this Agreement (individually and collectively, "AT&T") and Encinitas Union Elementary School District ("Customer"), a California government agency, with offices at 101 S. Rancho Santa Fe Road, Encinitas, CA 92024, is effective on the date of last execution ("Effective Date"). AT&T and Customer are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

References to "Agreement" refer to this Agreement, any applicable tariff or guidebook, and the documents listed in the Addendum and Attachment List, including any Statement of Work ("SOW"). New or revised Addenda, Attachments, Orders, and/or Statements of Work must be signed by Customer and AT&T Affiliate. The following order of precedence applies to the documents comprising an Agreement: (1) any applicable guidebook and tariff(s), (2) Addenda (and related SOWs and Attachments), (3) this Agreement, and (4) Orders.

Notices from a Party concerning this Agreement must be written and delivered to the other Party at the address(es) below (i) in person, (ii) by certified mail, return receipt requested, (iii) by traceable overnight delivery, or (iv) by facsimile, electronically confirmed and followed immediately by U.S. Mail. Notice will be effective upon delivery.

To Customer: Encinitas Union Elementary School District  
101 S. Rancho Santa Fe Road  
Encinitas, CA 92024  
Attention: Mr. Abby Saadat, Assistant Superintendent, Business Services  
Fax: 760-633-1298

To AT&T: AT&T Sales Team – Contract Notice  
101 W. Broadway, Room 370  
San Diego, CA 92101  
Fax: 619-237-2403  
Attention: AT&T Account Team for Encinitas Union Elementary School District

SO AGREED by the Parties' respective authorized signatories:

ENCINITAS UNION ELEMENTARY SCHOOL DISTRICT	AT&T GLOBAL SERVICES
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

### CONFIDENTIAL INFORMATION

*This Agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.*

## Master Agreement Terms and Conditions

### 1. DEFINITIONS

- 1.1 "Affiliate" means an entity that controls, is controlled by, or is under common control with a Party.
- 1.2 "Confidential Information" means ideas, know-how, trade secrets, computer programs, technical information, and other confidential information which is disclosed by a disclosing Party to a receiving Party under this Agreement. The terms of this Agreement shall be deemed Confidential Information by the Parties.
- 1.3 "Cutover" occurs (except as otherwise described herein or in an Addendum/Attachment/SOW) (a) for a Service when the Service is first provisioned or otherwise available for Customer's use at any single Site; and/or (b) for Equipment when the Equipment is delivered to the carrier for shipment, or if installation by AT&T is provided as part of the Services, then upon AT&T's installation of the Equipment.
- 1.4 "Equipment" means equipment that AT&T sells or leases to Customer under this Agreement.
- 1.5 "Software" means computer programs and related object code licensed by AT&T to Customer, including any software licensed with or separately from Equipment.
- 1.6 "Normal Business Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding AT&T recognized holidays.
- 1.7 "Order" means any purchase order for Equipment or Services that references this Agreement (or an Addendum).
- 1.8 "Service(s)" means any or all services provided by AT&T, as further described in this Agreement or an Addendum.
- 1.9 "Site(s)" means Customer locations where AT&T is to perform Services.

### 2. SERVICE-SPECIFIC TERMS AND CONDITIONS

- 2.1 Limitation on Service; Applicability of Tariffs. Service is offered subject to the availability and operational limitations of the necessary systems, facilities, and equipment. Except as otherwise specified in an Addendum, regulated Services (e.g., local or long distance telephone service) are subject to applicable tariffs and/or guidebooks (generally available at [www.sbc.com](http://www.sbc.com) or from an AT&T sales representative). Customer and any Customer end-user use of Service shall at all times comply with applicable laws, regulations and any AT&T written or electronic instructions for use.
- 2.2 Payment and Billing. Customer will pay AT&T (i) the monthly fees and nonrecurring charges set forth in the applicable Addendum (or, in the case of regulated services, at the charges set forth in the applicable tariff and/or guidebook), and (ii) applicable taxes, surcharges, and recovery fees (including universal service fees), and customs and duties. Except as otherwise provided in the applicable Addendum, (i) billing commences on Cutover; (ii) payment is due within 30 days after the date of invoice; and (iii) payment is subject to AT&T's credit requirements and AT&T may require a security deposit to ensure prompt payment. Customer will advise AT&T of any billing dispute within 30 days after receipt of invoice or the invoice shall be deemed correct. In addition to recovering attorneys' fees and costs of collection, AT&T may assess a late payment fee equal to (i) the lesser of 1.5% per month or the maximum amount allowed by law for Equipment or non-regulated Services, and (ii) as prescribed by the applicable tariff or guidebook for regulated Services. If Customer pays electronically, Customer agrees to pay using Automated Clearing House (ACH) which shall include remittance information.

### 3. GENERAL TERMS AND CONDITIONS

- 3.1 Term and Termination. This Agreement will start on the Effective Date and remain in effect until terminated by either Party as provided herein (the "Term"). Each Addendum is coterminous with this Agreement, unless the Addendum specifies a different term. Upon expiration of the term specified, each Addendum shall remain in effect on a month-to-month basis at AT&T's then current monthly pricing. Customer, and AT&T (in the case of Services that are no longer under a term commitment), may terminate this Agreement or an Addendum without cause and for convenience upon 30 days' prior written notice. If Customer terminates an Addendum with a specified term or term commitment, Customer shall pay the termination liability (i) specified in the Addendum; or (ii) if no termination liability is specified, an amount equal to (a) 50% of the remaining monthly recurring charges due under the Addendum; and (b) any charges imposed on AT&T by any third party as a result of Customer's early termination. Customer may cancel an Order for Equipment prior to Cutover, subject to payment of any non-recoverable restocking fees or costs incurred by AT&T. Customer may not cancel an Order for Equipment after Cutover.
- 3.2 Termination for Breach. This Agreement (or applicable Addendum) may be terminated immediately by either Party or AT&T may suspend performance hereunder or thereunder, upon written notice to the other Party if the other Party (i) is in material breach (including but not limited to failure to make timely undisputed payments) and such failure or breach is not remedied within 30 days after the terminating Party provides written notice to the breaching Party specifically describing such breach; (ii) ceases to carry on business as a going concern, becomes the object of voluntary or involuntary bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; (iii)

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## Master Agreement Terms and Conditions

engages in fraud, criminal conduct, or willful misconduct; or (iv) breaches the confidentiality obligations under this Agreement.

- 3.3 Force Majeure. Except in the case of payment of amounts due, neither Party will be liable to the other Party for any failure of performance due to any cause beyond that Party's reasonable control, including acts of God, fire, explosion, vandalism, terrorism, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action, or request by any government, civil, or military authority, national emergencies, insurrections, riots, wars, labor difficulties, supplier failures, shortages, breaches, or delays, or preemption of existing Service to restore Service in compliance with the regulatory rules and regulations, or, in the case of AT&T, delays caused by Customer or Customer's service or equipment vendors.
- 3.4 Assignment. Neither this Agreement (including any Addendum) nor any interest therein may be assigned, sublet, or in any manner transferred by Customer without the prior written consent of AT&T. Any attempted assignment or transfer in contravention of the preceding sentence will be void. AT&T may assign or subcontract any portion of the Services to be performed without Customer's prior written approval.
- 3.5 Use of Confidential Information. During the Term, each Party may obtain Confidential Information from the other Party. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within 15 days after disclosure. Neither Party may during the Term and for 3 years thereafter disclose any of the other Party's Confidential Information to any third party. Neither Party may use the other Party's Confidential Information except to perform its duties under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving Party, (ii) becomes publicly available through no wrongful act of the receiving Party, (iii) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information, or (iv) disclosed by the disclosing Party to a third party without an obligation of confidentiality. Upon termination of this Agreement or an applicable Addendum, each Party will return the other Party's Confidential Information.
- 3.6 Customer Information; Access and Safe Working Environment. AT&T may rely on any information provided by Customer and assumes no liability for any damages or costs that result from errors or omissions in such information. Customer shall provide AT&T with timely access to Customer information, facilities or equipment as AT&T reasonably requires to provide the Services and keep AT&T informed on developments in Customer's business or operations that may impact Service. AT&T may share Customer information and Confidential Information (including billing and usage information for Services purchased) with AT&T Affiliates and inform Customer of other AT&T product/service offerings. Customer shall maintain the Site in a suitable and safe working environment, free of Hazardous Materials. Customer represents and warrants that the area of the Site where AT&T performs Services is free of Hazardous Materials. AT&T does not handle, remove or dispose of, nor does AT&T accept any liability for, any Hazardous Materials at the Site. Customer shall pay AT&T for any damages, costs, fines or penalties AT&T incurs as result of the presence or release of such Hazardous Materials. If AT&T encounters any such Hazardous Materials, AT&T may terminate this Agreement or suspend performance until Customer removes and cleans up at its expense Hazardous Materials in accordance with this Agreement and applicable law. For purposes hereof, "Hazardous Materials" means any substance whose use, transport, storage, handling, disposal, or release is regulated to any law related to pollution, protection of air, water, or soil, or health and safety.
- 3.7 Publicity. During the Term, AT&T may refer to Customer, orally and in writing, as a customer of AT&T and may publish a press release announcing in general terms that AT&T and Customer have entered into this Agreement and AT&T may in general terms describe the activities contemplated hereunder. Any other reference to one Party by the other Party requires written consent of the first Party.
- 3.8 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES RELATED TO LOST PROFITS, TOLL FRAUD, LOSS OF USE, AND LOSS OF DATA, OR FAILURE TO REALIZE SAVINGS OR BENEFITS) ARISING UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS. EXCEPT AS OTHERWISE PROVIDED IN ANY APPLICABLE TARIFF OR GUIDEBOOK, THE TOTAL AGGREGATE LIABILITY OF AT&T, ITS SUPPLIERS, LICENSORS, AFFILIATES, DIRECTORS, OFFICERS, AND/OR EMPLOYEES UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED AMOUNTS ACTUALLY PAID BY CUSTOMER DURING THE 3-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CIRCUMSTANCES GIVING RISE TO THE FIRST CLAIM FOR DAMAGES UNDER THIS AGREEMENT.

### CONFIDENTIAL INFORMATION

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## Master Agreement Terms and Conditions

- 3.9 Warranties; Disclaimer of Other Warranties. With respect to maintenance or professional Services, AT&T warrants that the Services will be performed in a professional and workmanlike manner. AT&T further warrants that it has good title to the Equipment and that the Equipment will perform in accordance with the manufacturer's published specifications during the warranty period set forth by such manufacturer and AT&T will use commercially reasonable efforts to subrogate any AT&T claims or rights against the Equipment manufacturer to Customer. AT&T makes no warranties and assumes no liability for any defects or nonconformities caused by non-AT&T approved modifications or alterations; misuse, accident or neglect; or Customer failure to comply with AT&T or AT&T vendor specifications or requirements for use. These warranties do not cover and AT&T has no responsibility for (a) installation, maintenance or operation of non-AT&T provided equipment or software or impairment caused by such equipment/software; (b) compatibility of such equipment/software with AT&T-provided Equipment or Software; or (c) modifications, alternations or repairs to Equipment or Software by persons other than AT&T or its authorized agents. EXCEPT FOR THE FOREGOING, OR AS EXPRESSLY SET FORTH IN AN ADDENDUM, AT&T MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES RELATED TO THE MATERIALS, SERVICE, EQUIPMENT OR SOFTWARE, ALL OF WHICH ARE PROVIDED "AS IS" TO THE FULL EXTENT PERMITTED BY LAW.
- 3.10 Indemnities. Customer will indemnify and defend AT&T, its directors, officers, employees, agents and their successors ("Agents") from and against any and all third party claims and related loss, liability, damage and expense, including attorneys' fees, (collectively "Damages") arising from improper use of Services or information or any content or data transmitted over any AT&T network or facilities. AT&T will indemnify and defend Customer and its Agents from and against any Damages finally awarded or paid in settlement based on a claim that any Service, or AT&T-provided Equipment and Software (collectively, "Materials"), infringe a U.S. patent or copyright. If a final injunction or judgment is awarded against Customer prohibiting use of Service/Materials by reason of infringement of a U.S. patent or copyright, AT&T will at its option and expense either (a) procure the right for Customer to continue using the Service/Materials; (b) obtain and deliver equivalent non-infringing Service/Materials; or (c) terminate the infringing Service/Materials and refund to Customer amounts paid for infringing Service/Materials, less a reasonable charge for use. An indemnified Party shall provide the indemnifying Party with notice for any claim of indemnity and the indemnifying Party shall have complete authority to assume the sole defense and settlement of such claim. The indemnified Party may participate in the settlement or defense at its own expense and shall reasonably cooperate to facilitate the defense and settlement of such claims.
- 3.11 Equipment. To the extent that Customer purchases Equipment under an Addendum/Attachment/SOW, the following additional terms apply: AT&T will deliver the Equipment FOB shipping point, freight prepaid and charged. Title to the Equipment and all risk of loss to the Equipment shall pass to Customer at Cutover. Upon Cutover, AT&T hereby grants to Customer a personal, nontransferable, non-exclusive license to use the Software on or with the corresponding Equipment and AT&T (or its licensors) shall retain and continue to own all right, title and interest in any Software and all copies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and all other items reasonably required to perform installation and other Services related to the Equipment and obtain any necessary licenses, permits and consents to do so. Customer has 30 days after Cutover to test the Equipment and provide AT&T with written notice if the Equipment is defective and does not conform to manufacturer's specifications. AT&T will repair or replace (at its option and expense) any such non-conformity and if the Equipment fails to conform after a reasonable number of attempts to do so, AT&T will (at its option and expense) provide replacement Equipment or refund payments for non-conforming Equipment. AT&T is not responsible for and shall have no liability for, or any impairment caused by (a) any non-conformity caused by improper use or environmental or electrical conditions or attachment of non-AT&T or manufacturer materials or devices; or (b) installation, operation or maintenance of non-AT&T hardware/software. Customer is responsible for ensuring that such non-AT&T hardware/software is compatible with the Services, Equipment or Software. If Customer does not deliver a written certificate of acceptance or written notice of non-conformity within 30 days after Cutover, the Equipment shall be deemed accepted.
- 3.12 Miscellaneous. This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, representations, and understandings relating to the subject matter hereof. No modifications or subsequent agreements concerning the subject matter of this Agreement will be effective unless made in writing and signed by the Parties. The parties agree that this transaction may be conducted by electronic means. AT&T shall not be bound by any electronic or pre-printed terms additional to, or different from, those in this Agreement that may appear in Customer's form documents, orders, acknowledgments or other communications. Customer shall not resell any Services without AT&T's written consent. Any legal action arising under this Agreement must commence within 2 years after the cause of action arises. AT&T, its employees, agents, and representatives are not employees, servants, partners, or joint venturers of or with Customer. AT&T is an independent contractor and will at all times direct, control, and supervise all of its employees. This Agreement will be governed by the laws of Texas, without regard to its conflicts of law rules. The Parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement is determined to be invalid or unenforceable, this Agreement will be construed as if it did not contain such provision. The failure of a Party to insist upon strict performance of any provision of this Agreement in any one or more instances will not be construed as a waiver or relinquishment of such provision and the same will remain in full force and effect.

### CONFIDENTIAL INFORMATION

*This Agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.*

### **Addendum and Attachment List**

This Addendum and Attachment List to the Master Agreement (the "List") between AT&T and Customer, current as of the Effective Date, is incorporated into the Agreement by this reference. All Addenda and Attachments shall be attached to the Agreement.

1. AT&T Telecommunications Services State Tariff Services Within AT&T's Franchise Territory in the State of California - ICB Pricing Schedule
2. AT&T Addendum No. 1 to Master Agreement Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services
3. Addendum to Master Agreement for services/products subject to E-rate Funding

This List may be amended from time to time in writing and signed by the Parties.

### **CONFIDENTIAL INFORMATION**

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**AT&T Addendum No. 1 to Master Agreement**  
**Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services**

<b>CUSTOMER Legal Name</b>	<b>AT&amp;T Contact Information</b>
Customer Name ("Customer"): <b>Encinitas Union Elementary School District</b> Street Address: 101 S. Rancho Santa Fe Road City: Encinitas State / Province: CA Country: USA Domestic / International Zip Code: 92101	<b>AT&amp;T</b> <b>AT&amp;T Global Services ("AT&amp;T")</b> One AT&T Plaza Dallas, Texas 75202 Email: <a href="mailto:mast@att.com">mast@att.com</a>
<b>CUSTOMER Contact</b>	<b>AT&amp;T Sales Contact</b>
Name: Mr. Abby Saadat Title: Assistant Superintendent, Business services Telephone: 760-944-4300 x 1161 Fax: 760-633-1298 Email: <a href="mailto:abby.saadat@eusd.net">abby.saadat@eusd.net</a>	Name: Thomas Holland Street Address: 101 W. Broadway, Room 370 City: San Diego, State: CA Zip Code: 92101 Telephone: 619-237-3978 Email: <a href="mailto:th6341@att.com">th6341@att.com</a> Fax: 619-237-2403 Sales/Branch Manager: Gordon Moss
<b>CUSTOMER Signature</b>	<b>AT&amp;T Signature</b>
Authorized Agent or Representative	Authorized Agent or Representative
Print Name and Title	Print Name and Title
Date	Date

This Addendum outlines Individual Case Basis Terms & Conditions For Regulated State Local Exchange Services ("Addendum"), and is part of the Master Agreement between AT&T and Customer referenced above (the "Agreement"). In the event of an inconsistency or conflict between the Agreement, this Addendum and AT&T's tariffs, and *notwithstanding the order of precedence set forth in the Master Agreement*, the governing order of precedence shall be (1) the ICB Pricing Schedule (2) this Addendum, (3) the Agreement, and (4) the applicable tariff, except in Connecticut where the order of precedence shall be 1) the ICB tariffs, 2) the ICB Pricing Schedule, 3) this Addendum; 4) the Agreement.

## **1. THE SERVICE; DEFINITIONS**

### **1.1 Services**

A. SBC Global Services, Inc. dba AT&T Global Services on behalf of its Affiliate(s) named below which provide local exchange service ("AT&T"), will provide the Services to Customer under this Addendum which are identified in the Pricing Schedules and applicable Tariffs or Catalogs ("Tariffs").

B. The pricing, service descriptions and other provisions relating to the Services will be as set forth in: (i) this Addendum (including, the attached Pricing Schedules); (ii) the Agreement's Terms and Conditions; and (iii) the appropriate section of the Tariffs.

C. This Addendum shall remain in effect until all Pricing Schedules provided under this Addendum have expired.

### **1.2 AT&T Affiliates**

Illinois Bell Telephone Company dba AT&T Illinois; Indiana Bell Telephone Company, Incorporated dba AT&T Indiana; Michigan Bell Telephone Company, dba AT&T Michigan; The Ohio Bell Telephone Company dba AT&T Ohio; Wisconsin Bell, Inc. dba AT&T Wisconsin; Southwestern Bell Telephone, L.P. dba in the states of Arkansas, Kansas, Missouri, Oklahoma and Texas as AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas, respectively; Pacific Bell Telephone Company dba AT&T California; Nevada Bell Telephone Company, dba AT&T Nevada; The Woodbury Telephone Company dba AT&T Woodbury; and The Southern New England Telephone Company dba AT&T Connecticut

### **CONFIDENTIAL INFORMATION**

*Except with respect to Services provided in Ohio, this agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.*

**AT&T Addendum No. 1 to Master Agreement**  
**Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services**

**1.3 Definitions**

"**Cutover**" is when the Service is first provisioned or otherwise available for Customer's use at any single Site at the rates provided in this Pricing Schedule.

"**Effective Date**" of a Pricing Schedule is the date on which the last party signs this Addendum or, for a subsequently added Pricing Schedule, the date on which the last party signs the Pricing Schedule. If the rules of a regulatory authority having jurisdiction respecting a Service would require a later date, or an applicable tariff filing would require a later date, then the Effective Date of the applicable Pricing Schedule shall be in accordance with such rules.

"**Pricing Schedule**" means an ICB pricing schedule to this Addendum, either appended hereto or subsequently signed by the parties and referencing this Addendum.

"**Pricing Schedule Term**" is the period of time stated in the applicable Pricing Schedule.

"**Service**" means collectively all of the Service Components Customer orders under a Pricing Schedule.

"**Service Component**" means the individual components of a Service that Customer orders under a Pricing Schedule.

**2. TERMINATION**

The following termination provisions are only applicable to Services provided pursuant to an ICB Pricing Schedule.

**2.1** If a Service or a Service Component is terminated, Customer must pay all charges incurred as of the effective date of termination.

**2.2** If Customer terminates a Service or a Service Component for material breach by AT&T, Customer shall not be liable for any Termination Charges.

**2.3** Termination for Convenience. If Customer terminates a Service with a specified term or term commitment ("Term"), in whole or in part, for convenience or AT&T terminates for Customer's default, on or after Cutover but before the scheduled completion of the Term, Customer shall pay the termination liability (i) specified in the Pricing Schedule; or (ii) if no termination liability is specified, an amount equal to (a) all unpaid non-recurring charges (excluding non-recurring charges that were waived or incorporated into the monthly recurring rates), (b) fifty percent (50%) of the recurring monthly charges rate for the terminated Service as set forth in the Pricing Schedule, multiplied by the number of months remaining in the term of the Pricing Schedule at the point of termination, and (c) any special construction liabilities.

**3. PRICING**

**3.1 Pricing Schedule**

For custom priced Services, unless otherwise stated in a Pricing Schedule and except in Connecticut (where custom prices are not only set forth in the Pricing Schedule but also contained in ICB Tariffs), the rates and charges stated in the Pricing Schedule are stabilized until the end of the Pricing Schedule Term, and apply in lieu of the corresponding rates and charges set forth in the Tariffs. For Services provided per Tariff pricing, during the Term, rates will not increase above monthly rates set forth in the Pricing Schedule and rate decreases will automatically be applied to the monthly rates. Pricing for any Services that are not listed in a Pricing Schedule will be as described in the Tariffs.

**3.2 Discounts**

Any discounted rates set forth or referenced in a Pricing Schedule are the only discounted rates applicable to the Services and will be applied to the Services in the manner and to the extent specified in the Tariffs.

**3.3 Promotions/Credits/Waivers**

Customer is eligible only for promotions, credits or waivers identified in the applicable Pricing Schedule. Unless otherwise stated in this Addendum or the applicable Pricing Schedule, any additional promotions, credits or waivers set out in the Tariffs will not apply.

**CONFIDENTIAL INFORMATION**

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**AT&T Addendum No. 1 to Master Agreement**  
**Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services**

**3.4 Charges**

For Services provided under a custom pricing plan, Customer shall pay the non-recurring charge and/or monthly rate as listed in the applicable Pricing Schedule, which shall commence upon Cutover.

**4. TARIFF AND REGULATORY REGULATIONS**

Each Pricing Schedule is subject to the jurisdiction of a regulatory commission and will be subject to changes or modifications as the controlling commission may direct from time to time in the exercise of its jurisdiction. Therefore, for this purpose, each Pricing Schedule will be deemed to be a separate agreement with respect to the Services offered in a particular jurisdiction.

AT&T will, subject to the availability and operational limitations of the necessary systems, facilities, and equipment, provide the Services pursuant to the terms and conditions in the Tariffs. This Addendum and each Pricing Schedule may be filed with the appropriate state commission. If approval is required and not obtained, then this Addendum and/or the applicable Pricing Schedule will immediately terminate, and Customer shall receive a refund of any non-recurring charge paid and pre-paid amounts for Services not received.

**5. SERVICES AND JURISDICTION CERTIFICATION**

Customer acknowledges and certifies that the interstate traffic (including Internet traffic) constitutes **ten percent (10%) or less** of the total traffic on any non-switched circuit(s) purchased under any ICB Pricing Schedule associated with this Addendum. In California, Nevada, Illinois, Indiana, Michigan, Ohio and Wisconsin this clause is not applicable when AT&T DS1 or DS3 Service is used solely for the transport portion of AT&T local access ISDN Primary Rate Interface (PRI) service or AT&T Digital Transport Service-Enhanced channel(s).

**6. INSTALLATION AND CUTOVER**

Cutover of Service hereunder requires the installation of certain equipment and facilities on AT&T's side of the demarcation point. Customer shall be responsible for providing adequate space and power, as determined by AT&T, for equipment requirements at the designated locations. If Cutover is delayed due to changes, acts, or omissions of Customer, or Customer's contractor, or due to any force majeure event as defined in the "Force Majeure" provision of the Agreement, AT&T shall have the right to extend Cutover for a reasonable period of time equal to at least the period of such delay and consequences.

If Customer cancels this Addendum or a Pricing Schedule before the Service is Cutover for reasons not excused herein, Customer shall reimburse AT&T for all expenses incurred in processing the order and in installing the required equipment and facilities completed up to the date of cancellation as specified in the Tariffs.

All equipment, facilities and lines furnished by AT&T are the sole property of AT&T and are provided upon condition that they will be installed, relocated, removed, changed and maintained exclusively by AT&T as it deems appropriate in its sole discretion.

**7. SERVICE AND MAINTENANCE OBLIGATIONS**

AT&T represents to Customer that, for the Pricing Schedule Term, the applicable Services shall operate substantially and materially in accordance with the specifications in the Tariffs. If, under normal and proper use, the Service fails to perform substantially as specified above, and Customer notifies AT&T within the Term, AT&T shall correct such Service degradations or failures without charge to Customer, in accordance with the terms of this Addendum. Customer may report service and feature problems seven (7) days per week and twenty-four (24) hours per day. AT&T's repair obligation does not include damage, defects, malfunctions, service degradations or failures caused by Customer's or third party's abuse, intentional misuse, unauthorized use or negligent acts or omissions. In addition, the foregoing repair obligation applies only if Customer provides AT&T with access on its side of the demarcation point to enable AT&T to perform maintenance or repair work.

In the event of a Service interruption, a credit allowance will be made for the affected portion of the Service to the extent specified by the Tariffs. No other liability shall attach to AT&T as a result of such interruption to Service.

Equipment and facilities furnished by AT&T on Customer's premises, or furnished on any other property, shall be returned to AT&T in good condition, reasonable wear and tear thereof excepted. In case of damage, loss or destruction of any of AT&T's equipment or facilities, and not due to the negligence of AT&T or to fire, storm or other like casualty, Customer shall pay to AT&T the lesser of the value of the equipment, facility or line damaged, lost or destroyed, or the cost of restoring it to its original condition, as the case may be, less ordinary wear and tear.

**CONFIDENTIAL INFORMATION**

*Except with respect to Services provided in Ohio, this agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.*

**AT&T Addendum No. 1 to Master Agreement**  
**Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services**

**8. Terms and Conditions only applicable to Pricing Schedules with custom priced Services in California. If Customer is not purchasing Services in California under an ICB Pricing Schedule under this Addendum, then this section does not apply to Customer.**

**8.1 Confidentiality.** Customer requests that its identity be kept confidential and not be publicly disclosed in connection with any required regulatory filings by AT&T or the California Public Utilities Commission (CPUC), unless required by law.

**8.2 IntraLATA Usage.** Customer's locations with average monthly inbound and outbound intraLATA usage volumes equal to or greater than 8000 minutes of use, are defined as High Volume Locations. All other Locations are defined as Low Volume Locations. AT&T California will provide a list of the High Volume Locations to Customer prior to the Effective Date of the Pricing Schedule. All new locations are assumed to be Low Volume Locations until AT&T California evaluates the actual usage volumes. The Locations List and all new locations shall be evaluated and updated on the anniversary date of this Pricing Schedule or as otherwise mutually agreed to insure that Locations are in the proper category.

**8.3 Direct Dialed Calling Card.** The Direct Dialed Calling Card "per message" service and pay phone charges set forth in AT&T California's Tariff Schedule D.11 shall also apply. Calling card calls that originate outside of AT&T California's franchise territory or are operator assisted are not included in this Addendum and such calls will be billed at the prevailing tariff price.

**8.4 The IntraLATA Local Toll and Direct Dial Local (Zone) 3 Service** provided under the Pricing Schedule shall be billed in initial increments of eighteen seconds and subsequent increments of one second. Direct Dial Local and Zone Usage Measurement Service (Zone 1 and 2) provided under the Pricing Schedule shall be billed in increments of one minute. Custom 8 service shall be billed in 1/1000th of an hour increments. Customer will be charged the prevailing monthly recurring charge associated with a Regular Business Line and a Dedicated Access Line, and the nonrecurring installation charges for both a Regular Business Line and a Dedicated Access Line, in accordance with the prevailing Custom 8 tariff.

**8.5 Customer must maintain a minimum annual average message (call) length of one minute for the following California Services provided hereunder:** IntraLATA Toll, Direct Dialed Calling Card and/or IntraLATA Local Toll and Direct Dial Local (Zone) 3 Service. If Customer fails to maintain an annual one minute average call length for any of the Services, Customer will be charged the difference between the price(s) for the actual call length average and the price(s) for the one minute average. The discount prices will take effect within fifteen days of the Commencement Date of the Pricing Schedule, except that the discount price for billed telephone numbers ("BTN's") installed in the forty-five day period prior to the Commencement Date or anytime thereafter will take effect on the next bill round date after the Commencement Date.

**8.6 Unless otherwise stated in the Pricing Schedule, the prices set forth in the Pricing Schedules do not include applicable Federal Access End User Common Line Charges, local number portability charges, CPUC or FCC mandated surcharges or applicable taxes, toll usage, directory listings or other miscellaneous Tariff charges. Applicable Federal Access End User Common Line Charges, local number portability charges, tariff prices, surcharges and taxes will be billed on a monthly basis. AT&T California's Tariff Schedule Cal. P.U.C. No. A2.1.33, surcharges/surcredits, are not applicable to the prices set forth in the Pricing Schedules.**

**8.7 Except if specified in a Pricing Schedule, the Services set forth in the Pricing Schedules do not include intrabuilding network cable, Simple Inside Wire, repair services for such cable and wire, wiring associated with Customer-provided terminal equipment, Off-premises station mileage, or usage associated with Foreign Exchange Service, Data Lines, or Tie Lines.**

**8.8 Customer acknowledges and warrants that it lacks requisite regulatory authority such as Certificates of Public Convenience and Necessity ("CPCN") or other like authorization to resell services, and Customer is prohibited from reselling the Service provided pursuant to this Schedule to any other customers. However, Customer may make the Services provided hereunder available to its own subsidiaries or to legally affiliated entities. If Customer obtains regulatory authority to resell services and attempts to resell the Services provided hereunder, AT&T may, on ten days written notice, terminate any Schedule or portion of a Schedule for regulated local exchange telco Services in California.**

**9. Terms and Conditions only applicable to Pricing Schedules with custom priced Services in Ohio. If Customer is not purchasing Services in Ohio under an ICB Pricing Schedule under this Addendum, then this section does not apply to Customer.**

To the extent this Addendum relates to regulated Services provided in Ohio:

**CONFIDENTIAL INFORMATION**

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AT&T Master Agreement date last signed \_\_\_\_\_

**AT&T Addendum No. 1 to Master Agreement  
Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services**

9.1 Inclusion of termination liability in this Addendum or any Pricing Schedule does not constitute a determination by the Public Utilities Commission of Ohio (PUCO) that the termination liability is approved or sanctioned. The Customer is free to pursue its legal remedies should a dispute arise.

9.2 Approval of limitation of liability language by the Public Utilities Commission of Ohio (PUCO) does not constitute a determination by the Commission that the limitation of liability imposed by the company should be upheld in a court of law. Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequential damage claims, it is also the court's responsibility to determine the validity of the exculpatory clause.

9.3 In Ohio, Customer is not precluded from disclosing the terms and conditions of the Master Agreement or this Addendum or any Ohio Pricing Schedule to another entity.

**10. ENTIRE AGREEMENT**

This Addendum (including Pricing Schedules and attachments), the Agreement, and the Tariff(s) are the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, proposals or understandings, whether written or oral. This Addendum may not be modified except by a writing signed by both parties.

**End of Document**

**CONFIDENTIAL INFORMATION**

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<b>AT&amp;T California - ICB Pricing Schedule for State Tariff Services</b>	<b>Master Agreement</b> date last signed _____
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**AT&T Telecommunications Services**  
**State Tariff Services Within AT&T's Franchise Territory in the State of California - ICB Pricing Schedule**

<b>CUSTOMER ("Customer")</b>	<b>AT&amp;T Global Services ("AT&amp;T")</b>	<b>AT&amp;T Sales Contact Name</b> <input checked="" type="checkbox"/> <b>Primary Contact</b>
Encinitas Union Elementary School District	SBC Global Services, Inc. dba AT&T Global Services on behalf of its Affiliates	Name: Thomas Holland
<b>CUSTOMER Address</b>	<b>AT&amp;T Address</b>	<b>AT&amp;T Sales Contact Information and for Contract Notices</b>
Street Address: 101 S. Rancho Santa Fe Road City: Encinitas State: CA Zip Code: 92024	One AT&T Plaza Dallas, Texas 75202	Street Address: 101 W. Broadway, Room 370 City: San Diego State: CA Zip Code: 92101 Fax: 619-237-2403 Email: th6341@att.com Sales/Branch Manager: SCVP/RVP Name:
<b>CUSTOMER Contact</b>	<b>CUSTOMER Billing Address</b>	<b>AT&amp;T Authorized Agent or Representative Information (if applicable)</b> <input type="checkbox"/> <b>Primary Contact</b>
Name: Mr. Abby Saadat Title: Assistant Superintendent, Business Services Telephone: 760-944-4300 X 1167 Fax: 760-633-1298 Email: abby.saadat@eusd.net	Street Address: 101 S. Rancho Santa Fe Road City: Encinitas State: CA Zip Code: 92024	Name: Company Name: Agent Address: City: State: Zip Code: Telephone: Fax: Email: Agent Code

This Individual Case Basis (ICB) Pricing Schedule ("Schedule") is an attachment to Addendum No. 1 to the Agreement between AT&T and Customer referenced above, and is part of the Agreement.

**AT&T Affiliate:** Pacific Bell Telephone Company dba AT&T California

**SO AGREED** by the parties' respective authorized signatories:

**CUSTOMER**

By: \_\_\_\_\_  
Typed or  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**AT&T GLOBAL SERVICES**

By: \_\_\_\_\_  
Typed or  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONFIDENTIAL INFORMATION**

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<b>AT&amp;T California - ICB Pricing Schedule for State Tariff Services</b>	<b>Master Agreement</b> date last signed _____
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## GENERAL TERMS AND CONDITIONS

The following terms and conditions apply to the Services subscribed to by Customer under this Pricing Schedule. ICB pricing is offered to Customer pursuant to this Pricing Schedule because of the unique size or configuration of these business services.

### 1. GENERAL DESCRIPTION OF SERVICE TO BE PROVISIONED, INSTALLED AND MAINTAINED.

The Service(s) described below is provisioned solely by AT&T, and is not jointly provisioned with any other carrier.

Service	Description
OPT-E-MAN®	<p><b>OPT-E-MAN® Service.</b> ("Service") OPT-E-MAN® Service provides a fiber-based service that transparently interconnects two or more Customer locations within a Metropolitan Area Network (MAN) as if they were segments on the same LAN using packet-based switching technologies. The Service provides dedicated bandwidth from 5 Mbps up to 1 Gbps. The handoff to Customer will be a 10/100 Mbps or 1 Gbps Ethernet interface.</p> <p>Customers may connect any two or more locations together, as long as they are in the same LATA or MAN and the Service is available. The Service offers logical point-to-point or point-to-multipoint or multipoint-to-multipoint configurations that support Ethernet-to-Ethernet LAN connections. If Customer connects to the OPT-E-MAN network using a bridge or switch for Layer 2 connectivity, only 50 Media Access Control (MAC) addresses can be used per Layer 2 device, per port. Any additional MAC addresses will be assigned additional charges, with a limit of 100 MAC addresses total per port as set forth in the applicable tariff.</p>

### 2. PRICING SCHEDULE TERM AND EFFECTIVE DATES

Pricing Schedule Term and Term Start Date
The term of this Pricing Schedule shall begin upon Cutover but if regulatory approval is required, in no event shall Cutover occur prior to the date of approval by the California Public Utilities Commission (CPUC), and will continue for <b>sixty (60)</b> months ("Pricing Schedule Term"). No rates or discounts shall be applied prior to Cutover. Upon the expiration of the Pricing Schedule Term, any rates or discounts provided hereunder will no longer apply.

Effective Date of Rates and Discounts	Pricing Schedule Term Start Date
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### 3. GROWTH / ADDITIONAL SERVICES, INSTALLATION, ADDS, MOVES AND CHANGES

The price in Section 5.2 below also includes the non-recurring charge to initially provision and install the new quantities of Service(s) as set forth in Section 5.2.

Unless otherwise stated herein, for all other installations, adds, moves and changes of any Service provided hereunder, Customer will pay the prevailing tariff monthly and non-recurring charge.

### 4. RAMP-UP PERIOD

The six month period after Cutover of the first location shall be the "Ramp-up Period." Billing shall begin for each individual location listed in Section 7 below, as it is installed, at a monthly price of \$1,382.40 each. The Monthly Price listed below of \$17,447.46 shall begin no later than the end of the Ramp-up period. If all locations are installed before the end of Ramp-Up Period, AT&T shall bill the Customer the Monthly Price listed above at that earlier time.

## CONFIDENTIAL INFORMATION

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<b>AT&amp;T California - ICB Pricing Schedule for State Tariff Services</b>	<b>Master Agreement</b> date last signed _____
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## 5. REVENUE COMMITMENT AND RATES

### 5.1. Revenue Commitment

Monthly Quantity Commitment	\$17,447.46
<p>Customer has elected to pay on a monthly basis for the term of this Pricing Schedule. The monthly price set forth above is for the minimum quantity of Service as set forth and described in Section 5.2 below. The price includes 1) the monthly service charge for the minimum quantities and 2) the curb to existing Demarc Custom Fiber Build charges of \$112,502.36. The price does not include any work related to Hazardous Materials (see the corresponding section of the Agreement). Customer is also responsible for complying with AT&amp;T's room ready requirements at the Demarc.</p> <p>If Customer elects to decrease the Service to less than the minimum quantities described in Section 5.2 below, Customer will continue to pay the monthly price set forth above.</p> <p>If this Pricing Schedule is terminated prior to the expiration date, Customer shall pay AT&amp;T (i) any unpaid non-recurring charges, (ii) fifty percent (50%) of the recurring monthly charges rate for the terminated Service as set forth in this Pricing Schedule, multiplied by the number of months remaining in the term of the Pricing Schedule at the point of termination, and (iii) any unpaid curb to existing Demarc Custom Fiber Build Charges.</p>	

### 5.2 Rates:

#### Service Components, Quantities, Monthly Rates

Service	Description – Service Components	USOC	Quantity New	Quantity Existing	Monthly Recurring Rate, each
OPT-E-MAN	OPT-E-MAN(SM) Basic Connect 100M	P9FEX	10		\$ 368.00
OPT-E-MAN	OPT-E-MAN(SM) Basic Connect 1G	P9FGX	1		\$ 544.00
OPT-E-MAN	CIR - 1 Gbps (Silver)	R6EZC	1		\$ 1,904.00
OPT-E-MAN	CIR - 100 Mbps (Silver)	R6ELC	10		\$ 896.00
OPT-E-MAN	Curb to Demarc	n/a			\$2,359.46

End of Document this Section – Locations follow

#### **CONFIDENTIAL INFORMATION**

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<b>AT&amp;T California - ICB Pricing Schedule for State Tariff Services</b>	<b>Master Agreement date last signed _____</b>
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AT&T TELECOMMUNICATION SERVICES PRICING SCHEDULE INCLUDES PRICING FOR SERVICES PROVIDED AT THE CUSTOMER LOCATIONS NOTED BELOW

**Encinitas Union Elementary School District**

**6. SERVICE LOCATIONS IN CALIFORNIA**

SERVICE	LOCATIONS			
OPT-E-MAN	101 S. Rancho Santa Fe Rd	Encinitas	CA	92024
OPT-E-MAN	1690 Wandering Rd	Encinitas	CA	92024
OPT-E-MAN	185 Union St	Encinitas	CA	92024
OPT-E-MAN	2050 Park Dale Lane	Encinitas	CA	92024
OPT-E-MAN	3035 Levante St	Carlsbad	CA	92009
OPT-E-MAN	3330 Calle Barcelona	Carlsbad	CA	92009
OPT-E-MAN	7885 Paseo Aliso	Carlsbad	CA	92009
OPT-E-MAN	8000 Calle Acervo	Carlsbad	CA	92009
OPT-E-MAN	910 Melba Rd	Encinitas	CA	92024
OPT-E-MAN	941 Capri Rd	Encinitas	CA	92024
OPT-E-MAN	6401 Linda Vista Rd	San Diego	CA	92111

End of Document

**CONFIDENTIAL INFORMATION**

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**ADDENDUM TO MASTER AGREEMENT ("Agreement") FOR  
SERVICES AND/OR PRODUCTS SUBJECT TO UNIVERSAL SERVICES ("E-RATE") FUNDING  
(PLEASE CHECK THE APPROPRIATE BOX – A OR B)**

This Addendum ("Addendum"), entered into by SBC Global Services, Inc. dba AT&T Global Services on behalf of itself and its Affiliates ("AT&T") and the ENCINITAS UNION ELEMENTARY SCHOOL DISTRICT ("Customer") and effective as of the date last signed below ("Effective Date"), is an attachment to that certain Agreement dated [\_\_\_\_\_] between the parties thereto. If there are any inconsistencies between the Agreement and this Addendum, the terms and conditions of this Addendum shall control.

**A) ☐ NO E-RATE FUNDING REQUIRED [Agreement effective immediately; not dependent on funding.]**

Customer desires that Services commence on or about \_\_\_\_\_. The Effective Date and/or the obligations of Customer and AT&T under the Agreement are not in any way dependent or contingent upon Customer's application for, or receipt of, any funding award from the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). In the event Customer applies for funding, Customer must notify AT&T within ten (10) business days of Customer's receipt of a Funding Commitment Decision Letter ("FCDL") from the SLD if funding has been awarded.

(Please sign below – Section B does not apply if Section A is checked)

**B) ☒ DEPENDENT ON E-RATE FUNDING [Agreement may be terminated if funding is denied.]**

1. Scope and Term. AT&T agrees to provide Customer services and/or products that Customer has determined are eligible for universal service discounts ("Discounts") pursuant to Section 254 of the Telecommunications Act ("Act") of 1996 (47 U.S.C. § 254) and the rules and regulations promulgated thereunder. (Such Services are further described in the Agreement). This Addendum remains in effect for so long as AT&T is providing the Services or Customer is obligated to pay for such Services.

2. Eligibility of Products and Services: The identification of certain Services in the Agreement as "E-Rate Eligible" or "E-Rate Ineligible" for Universal Service ("E-Rate") funding is not dispositive, nor does it suggest that this or any other Services in this Agreement will be deemed eligible for such funding. Any conclusions regarding the eligibility of Services for E-Rate funding rests with the SLD and/or FCC as administrators of the E-Rate program. AT&T is not responsible for the outcome of these conclusions.

3. Payment for Services: Customer agrees (i) that if E-Rate funding for any Service(s) is denied or withdrawn in whole or in part, Customer is responsible for paying AT&T the full cost of such Service(s). If the Universal Service Administrative Company ("USAC") seeks reimbursement of E-Rate funds due to Customer's failure to comply with the E-Rate regulations, including Customer delays in submitting required Forms or contracts; or, due to a decision by USAC that any approved Services are ineligible (other than as the result of AT&T's failure to comply with the E-Rate requirements), Customer shall reimburse AT&T for any funds AT&T must return to USAC within ninety (90) days of notice from USAC seeking reimbursement.

4. Requested Information. If requested, Customer will provide AT&T with copies of the following E-Rate-related materials (including all attachments): (i) Form 471 and Item 21 Attachments; if appropriate, (ii) Form 500; (iii) Service Substitution Request; and, (iv) Service Certification Form. If the Customer issues purchase orders, Customer shall clearly delineate between eligible and non-eligible Services on those orders.

5. Representations, Warranties and Indemnities. Each Party represents and warrants that it has or will comply with all laws and the requirements applicable to the E-Rate Program. Each Party agrees to indemnify and hold harmless the other Party (and its employees, officers, directors and agents) from and against all third party claims (including FCC or USAC claims) and related loss, liability, damage and expense (including reasonable attorney's fees) arising out of the indemnifying Party's violation of the E-Rate Requirements or breach of the representations, warranties, and terms contained in this Addendum.

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**If Section B, above, is checked, Customer should designate the intended funding method:**

☐ Billed Entity Application Reimbursement ("BEAR" ) – Form 472\*

☒ Service Provider Invoice form - ("SPI") – Form 474\*\*

\* Customer will file the Form 472 and certify that it has received and paid for Services in full and AT&T will remit the discounted portion to the customer within twenty (20) business days after receipt of payment from USAC.

\*\* AT&T will file Form 474 ("SPI" form) after Services have been provided and Customer has notification of an approved Funding Commitment Decision Letter ("FCDL") and an approved Form 486. AT&T will then provide discounts on the Customer's bill. Customer also agrees to promptly submit any AT&T or SLD Forms needed to support requests for payment of Services rendered.

**C) ☒ ENTRANCE FACILITIES FOR PRIORITY-ONE SERVICE [Placement of facilities on customer premise.]**

Customer desires eligible telecommunications services to be rendered to its location(s) by placing cabling within subterranean conduit facilities across Customer's premises. Customer does not wish to provide these subterranean conduit facilities themselves, but instead requests the placement of the facilities as part of the construction associated with the delivery of the underlying service. Accordingly, Customer hereby:

1. Agrees to execute a Blanket Easement, substantially in the form attached hereto, granting AT&T the right to place and maintain facilities on Customer's premise(s), in accordance with designs agreed to within the Statement of Work, Scope of Work or other appropriate engineering documents, approved by the parties in connection with the project;
2. Agrees to notify AT&T of any and all issues arising out of or related to such facilities, including the need for maintenance or repair;
3. Assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the facilities and the location of such facilities;
4. Agrees to pay AT&T, on a time and materials basis at AT&T's then prevailing rate, or such other rates as may be mutually agreed to by the parties, for all maintenance and/or repair services rendered on such facilities while in place on the premises;
5. Agrees to indemnify, defend and hold AT&T harmless from any and all liability that may arise out of the presence, placement and maintenance of such facilities, except for AT&T's gross negligence associated with such facilities; and
6. Grants AT&T the right, but not the obligation, to remove the facilities should Customer terminate its agreement for the underlying telecommunications services.

SO AGREED by the Parties' respective authorized signatories:

<b>ENCINITAS UNION ELEMENTARY SCHOOL DISTRICT</b>	<b>AT&amp;T GLOBAL SERVICES ON BEHALF OF ITS AFFILIATES</b>
<i>Customer Signature:</i>	<i>AT&amp;T Signature:</i>
Print Name:	Print Name:
Title:	Title:
Date:	Date:

**CONFIDENTIAL INFORMATION**

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## AT&T CUSTOMER REQUIREMENTS WORKSHEET & MEMORANDUM OF UNDERSTANDING FOR OPT-E-MAN INSTALLATION

THE FOLLOWING LIST OF REQUIREMENTS MUST BE FULLY MET BEFORE THE INSTALLATION PROCESS OF ANY AT&T OPT-E-MAN EQUIPMENT WILL BEGIN

**THESE REQUIREMENTS SHALL BE COMPLETE 30 DAYS PRIOR TO EQUIPMENT PLACEMENT OR AS MUTUALLY AGREED.**

- 1) **Space Requirement:** Cisco WS-3550-24-SMI or WS-3550-12G (or equivalent) will be placed in an AT&T or customer provided 19" or 23" bay or cabinet. **Customer provided racks/cabinets require approval and evaluation by the AT&T Loop Electronics Coordinator.**

OSHA requires a minimum of 36" to the front and rear of the bay/cabinet. The bay/cabinet has to be securely mounted and earthquake braced by bolting to the floor.

- 2) **Power Requirements:** For each Cisco WS-3550-24-SMI or WS-3550-12G a dedicated fused/breaker, 15 amp, 110V AC 3 prong outlet which is properly grounded. This receptacle has to be located within 6' of the Cisco equipment.

- 3) **Fiber Termination:** There are currently (2) options available for Fiber Termination  
#1) Rack mounted in an AT&T or customer provided 19" or 23" aluminum or steel relay rack.  
#2) Wall mounted on a customer provided 3/4"x 4'x 6' plywood backboard. **See Customer Site Preparation Document, Wall-Mounted Cisco 3550 document.**

- 4) **Demarcation Selection:** There are currently (2) options available for circuit demarcation. ("Hand-off Point")  
#1) Rack mounted in an AT&T or customer provided 23" or 19" aluminum or steel relay rack.  
#2) Wall mounted on a customer provided 3/4"x 4'x 6' plywood backboard.

The point of demarcation (handoff) of the proposed service shall be the customer specified MDF as shown on customer supplied site maps attached to this bid. Service provider shall be responsible for costs of delivering the service to the MDF. Encinitas Union Elementary School District will provide backboard and/or floor space required for the AT&T fiber terminations and network interface equipment. See Space Requirements above. AT&T will provide required backboards, electrical and grounding facilities from nearest sub panel if adequate facilities are not available.

At locations where AT&T currently has fiber optic cable and/or fiber terminating equipment, unless specifically stipulated otherwise, it is assumed that the Opt-E-MAN terminating equipment shall be located in proximity to the existing fiber optic cable terminations. If it is necessary or desirable to locate the Opt-E-MAN terminating equipment and/or point-of-demarcation at another location, the customer will assume the responsibility of providing the pathway and structure from the MPOE to that location as stipulated above

- 5) **Supporting Structure:** (must meet National Electric Code Standards) may be either a cable rack or a metallic EMT conduit.
- 6) **Grounding Requirements:** Relay racks/cabinets must be grounded by placing an exposed #6 or larger grounding wire to the building's ground source. This ground wire will be attached to the closest ground rod

(earth ground) or building bus bar available and run to the AT&T fiber termination equipment/rack. In addition, the 110V, 15 amp AC outlet must be 3 prong and properly grounded.

**7) Environment (OPT-E-Man location):** The customer shall provide a safe, secure, dust-free environment. This location should be free of any major EFI/RFI fields. The AT&T fiber termination equipment/rack cannot be closer than 3' from any primary source of power. If the equipment is being placed during a period of new or scheduled construction, the Loop Electronics Coordinator (LEC) from AT&T will determine if the location is suitable for installation after his initial site inspection. The engineer will determine at the time of the final inspection, prior to the actual placement of the equipment, if the room is ready for the installation to begin. If the room is not ready, the customer will be notified of the unsatisfactory items to correct.

**8) Conduit/Path (fiber termination to OPT-E-Man location):**

When it is necessary for the customer to provide conduit/path, the customer shall provide conduit (min. 2" EMT) and 1 1/4" hard plastic corrugated inner duct with pull rope through which AT&T will place its fiber optic cable. The size of the conduit beyond that necessary to accommodate the inner duct will be dependent on the customer's other needs and anticipated future growth. Any more than 300' or 2 - 90 degree turns in the path will require a pull box (12"x12"x18" minimum).

As each situation is unique, requested deviations from these standards can be evaluated and approved by the AT&T Loop Electronics Coordinator at the time site visits are made.

**9) General Requirement:** Provide the following information for the AT&T Technicians:

- #1) Contact name and telephone number at building where install is scheduled.
- #2) Any asbestos or hazardous materials present in work area.
- #3) Any noise or time restrictions.
- #4) Building access information such as parking, unloading zones, elevators and route to work area.

**Safe Working Environment/Hazardous Materials**

It is expected that the customer will provide a safe work environment. The customer is responsible for removal or abatement of any known Asbestos, PCBs or other toxic waste and hazardous material prior to the commencement of work by AT&T. In the event AT&T encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, AT&T shall immediately stop work in the area affected and report the condition to designated customer contact in writing.

Since removal and/or abatement of asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the contract documents, district shall contract directly for such specialized services, if required, and shall not require the AT&T to subcontract for such services. District shall have sole responsibility for all costs associated with the identification and removal or abatement toxic waste and hazardous materials.

**Assumptions**

To assure the efficient and cost effective completion of this project, AT&T Project Managers will be scheduling AT&T work groups based on customer commitments to complete room-ready requirements as agreed.

**The customer understands that any delays in completing their room ready and/or other requirements will result in delays in AT&T's ability to fulfill their service request.**

The customer will be prepared and have appropriate staff designated to test and accept service on scheduled due dates.



The undersigned customer or representative understands and agrees to provide all the above listed requirements for AT&T prior to the installation process.

XXX Customer	AT&T
By:	By:
Printed Name:	Printed Name: <b>ANTONIA DAUBEK</b>
Title:	Title: <b>TECHNICAL SALES EXECUTIVE</b>
Date: <b>1/10/2007</b>	Date: <b>1/10/2007</b>

**END OF DOCUMENT**



# **OPT-E-MAN**

## **Encinitas Union Elementary School District**

### **Responsibilities Document**

#### ***OPT-E-MAN Customer Responsibilities***

##### **1. AT&T's Policies/practices**

- If Virtual Local Area Network (VLAN) ID's are required to achieve traffic segregation Ethernet Relay Service, (ERS) also referred to as service multiplexing, **AT&T WILL ASSIGN all VLAN IDs to customer traffic/connections.**
- If the customer will utilize Ethernet Wire Service (EWS) i.e. port based point-to-point only, no coordination is necessary as **AT&T** will pass both tagged and untagged traffic across the point-to-point connection.
- **AT&T WILL NOT** assign an Internet Protocol (IP) address to the customer port. The link between customer and **AT&T** is a trunk.
- **AT&T WILL NOT** enable Cisco Discovery Protocol (CDP) to/from the **AT&T** port.
- **AT&T WILL NOT** enable UniDirectional Link Detection (UDLD).
- **AT&T WILL NOT** enable keep-alive.
- **AT&T** will also drop customer's Bridge Protocol Data Unit (BPDU) at User-Network Interface (UNI).

##### **2. To insure maximum throughput efficiency, Traffic Shaping should be enabled on the Customers Provided Equipment (CPE).**

When traffic policing is applied on the OPT-E-MAN<sup>®</sup> network, traffic shaping is required in order to ensure that packets are not dropped when entering the network.

**If shaping is not turned on, AT&T will randomly drop traffic if the customer exceeds the amount of Committed Information Rate (CIR) that is contracted per connection.** Most routers on the market should support traffic shaping, which makes it easy to implement in its simplest form.

Shaping is supported in the standard Cisco IOS since it is a common IP software function. Check your current router IOS to be sure it supports Traffic Shaping.

OPT-E-MAN<sup>®</sup> can scale from 5 Mbps to 1 Gbps as long as the customer can shape their traffic - If customers are not able to shape their traffic, they should purchase service in the 10/100/1000 Mbps speed tiers to achieve maximum use of the bandwidth. **Failure to comply with this recommendation could result in reduced throughput and performance.**

##### **3. What CPE is required?**

The customer CPE can be a switch, bridge or router. If a customer elects to connect to the OPT-E-MAN<sup>®</sup> network using a switch or bridge, then the customer must be made aware of the limitations on Media Access Control (MAC) addresses per port.

##### **MAC Address Limitations - OPT-E-MAN<sup>®</sup>**

If the customer connects to the OPT-E-MAN<sup>®</sup> network using a bridge or switch for Layer 2 connectivity, there are limits related to number of available MAC addresses per port. For OPT-E-MAN<sup>®</sup> service, a total of 50 MAC addresses can be utilized per Layer 2 device, per port. Any additional MAC addresses will be assessed an additional charge, with a limit of 100 MAC addresses total per port.



# OPT-E-MAN

## Encinitas Union Elementary School District

### Responsibilites Document

There are certain types of equipment that can't work with the 3550. The CPE that Cisco has identified are the Cisco 8550 and the Cisco 5550. The basic problem is that these switches will cause an intermittent 2-second flap.

Other vendor's equipment is unknown at this time.

#### 4. OPT-E-MAN® Multicast and Broadcast traffic limitations

**The following traffic controls are placed on Basic Plus (multipoint-to-multipoint) OPT-E-MAN® network configurations:**

**Broadcast Traffic** - is used to refer to Ethernet frames that are forwarded to all nodes on the network using the broadcast Ethernet address.

**Multicast Traffic** - is used to refer to Ethernet frames that are forwarded, in a point to multipoint fashion, across the network to multiple recipients that belong to groups that are identified using any of the multicast Ethernet addresses defined by the Internet Assigned Numbers Authority (IANA) as Internet Multicast.

**Reason for Controls** - Continuous and unpredicted floods of broadcast and multicast traffic can use substantial network bandwidth to the point of overloading the network's capacity. For this reason, it is necessary to place the following limits on the traffic types noted above:

Broadcast traffic limitation = 200 packets per second per port

Multicast traffic limitation = 1 Mbps per port

#### 5. The customer must provide the following prior to the AT&T installing the Cisco 3550 (or equivalent) NTE:

The customer must provide a 110Volt 15 amp AC outlet, preferably dedicated to each 3550 installed on the premise. (Please see attached AT&T Customer Requirement Worksheet for necessary Power, Grounding, Space, Conduit, and Environmental requirements.)

#### 6. The customer must complete the following on the CPE prior to service turn-up.

- If the customer is connecting to a 3550 port that will not have multiple Ethernet Virtual Connection (EVC)'s assigned to a 10/100 Mbps connection, AT&T will require customer to configure the interfacing data port with the following:
  - Speed set to 100 Mbps (No auto-negotiation)
  - Duplex set to Full (No auto-negotiation)
  - Traffic Shaping/Policing - limit output rate at or below the bandwidth usage purchased per connection
  - If utilizing multipoint-to-multipoint configuration, customer should enable controls for multicast and broadcast traffic within the customer network(s).
- If the customer is connecting to a 3550 port that will support multiple EVCs assigned to a 10/100 Mbps connection, **AT&T** will require the customer to configure the interfacing data port with the following:
  - VLAN tagging - Customer traffic needs to be tagged with local phone company assigned VLAN(s) provided by the Ethernet Network Operations Center (ENOC)



## OPT-E-MAN

### Encinitas Union Elementary School District Responsibilities Document

- Speed set to 100 Mbps (No auto-negotiation)
  - Duplex set to Full (No auto-negotiation)
  - Traffic Shaping/Policing - limit output rate at or below the bandwidth usage purchased per connection
  - If utilizing multipoint-to-multipoint configuration, customer should enable controls for multicast and broadcast traffic within the customer network(s).
- If the customer is connecting to a 3550 port that will not have multiple EVCs assigned to the 1 Gbps connection, AT&T will require the customer to configure the interfacing data port with the following:
  - Speed set to no auto-negotiation
  - Duplex set to full
  - Traffic Shaping/Policing - limit output rate at or below the bandwidth usage purchased per connection
  - If utilizing multipoint-to-multipoint configuration, customer should enable controls for multicast and broadcast traffic within the customer network(s).
- If the customer is connecting to a 3550 port that will have multiple EVCs assigned to the 1 Gbps connection, AT&T will require the customer to configure the interfacing data port with the following:
  - VLAN tagging - Customer traffic needs to be tagged with AT&T assigned VLAN(s) provided by the ENOC
  - Speed set to no auto-negotiation
  - Traffic Shaping/Policing - limit output rate at or below the bandwidth usage purchased per connection
  - If utilizing multipoint-to-multipoint configuration, customer should enable controls for multicast and broadcast traffic within the customer network(s).

#### 7. Caveats for installation of service:

- Changes to Customer Requirements – should the customer change interface types, quantities, or locations this would invalidate the network design agreed upon between AT&T and the customer. This could delay service turn-up as it may result in a change in the type of Network Termination Equipment (NTE) to which the customer will be connecting.
- Distance limitation – The customer may need to address signal regeneration beyond the demarcation. Demarcations will be implemented consistent with the regional MPOE and Demarcation rules. See the following table for signaling limits from the AT&T NTE, which will be at some point behind the demarcation.

Circuit Speed	Cable type	Overall Limit
100 Mb	UTP electrical (CAT5e or better)	90 M
1000-SX	50u Multi-Mode Fiber	550M



**OPT-E-MAN**  
**Encinitas Union Elementary Schoool District**  
**Responsibilites Document**

**SO AGREED** by the Parties' respective authorized signatories:

<b>ENCINITAS UNION ELEMENTARY SCHOOL DISTRICT</b>   <b>By:</b> <hr/> <b>Printed Name:</b> <hr/> <b>Title:</b> <hr/> <b>Date:</b> <u>1/10/2007</u> <hr/>	<b>AT&amp;T</b>   <b>By:</b> <hr/> <b>Printed Name:</b> <b>ANTONIA DAUBEK</b> <hr/> <b>Title:</b> <b>TECHNICAL SALES EXECUTIVE</b> <hr/> <b>Date:</b> <b>1/10/2007</b> <hr/>
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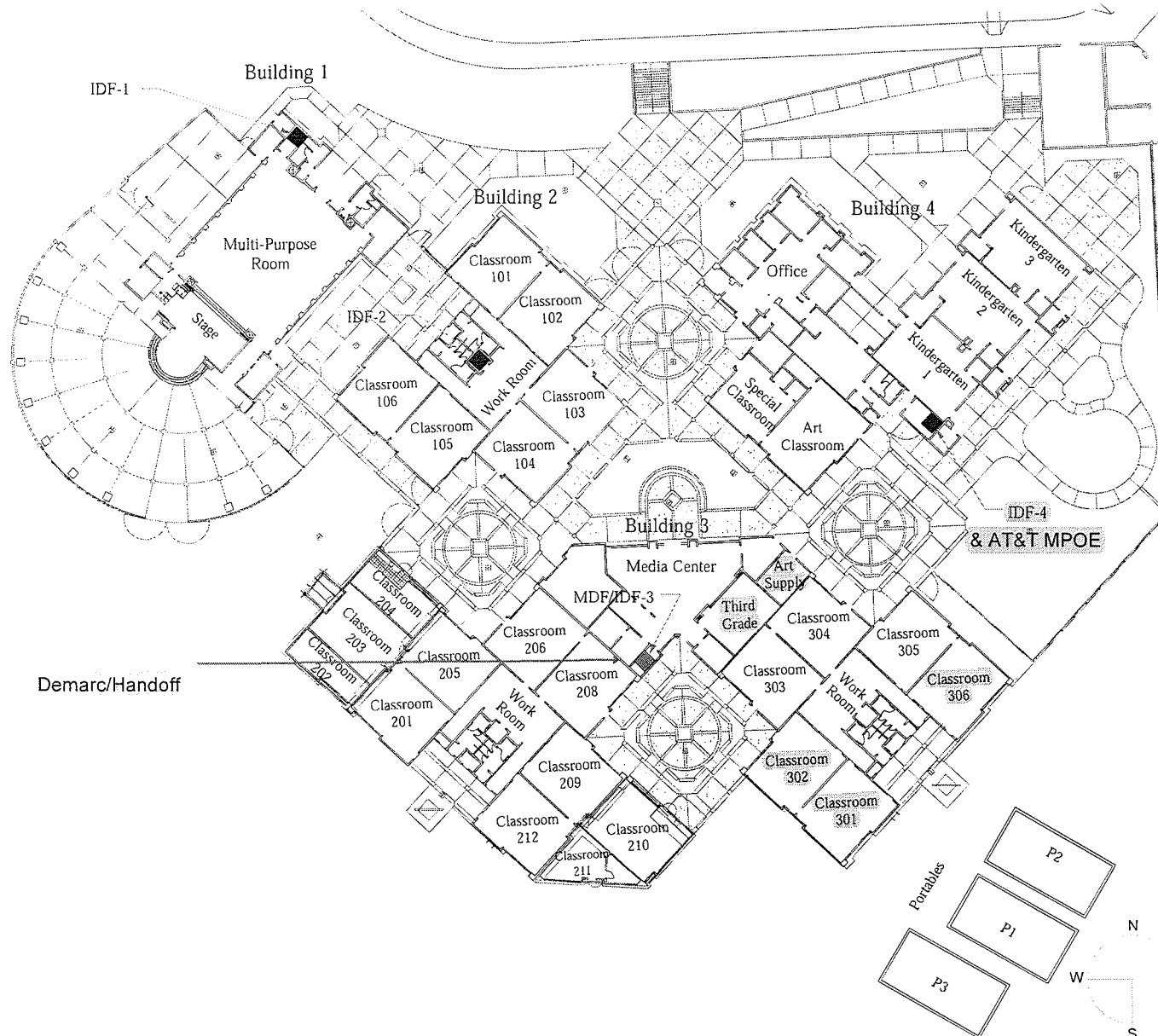
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Network "As-Build" Illustration

# Olivenhain Pioneer Elementary School

Encinitas Union School District

## Campus Site Plan (Existing)



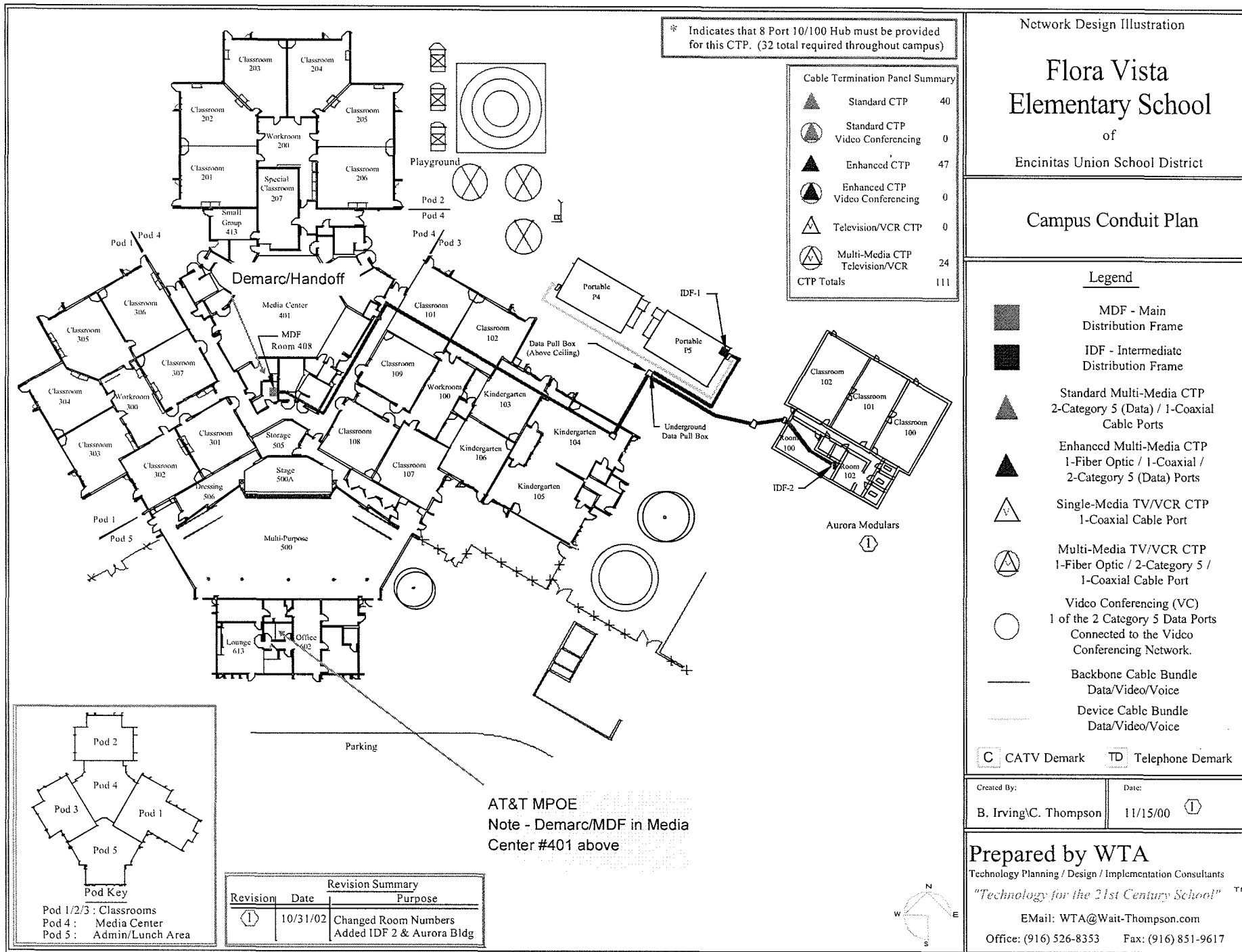
-  MDF - Main Distribution Frame
-  IDF - Intermediate Distribution Frame
-  CATV / Multi-Media
-  Data Communications
-  Data Communications / Video Conferencing
-  Data / Video Conferencing / CATV / Multi-Media
-  Telephone Instrument
-  Backbone
-  Data/Video/Voice
-  Workstation/Device Data/Video/Voice
-  Telephone Demark
-  CATV Demark

### Legend

Created By:  
B. Irving/C. Thompson

Date:  
4/10/98

Prepared By  
**WTA**  
"Technology for the 21st Century"™











Network "Conceptual" Illustration

# District Office Complex

Encinitas Union School District

## Building 300 (B) - 1st Floor (Existing)

-  MDF - Main Distribution Frame
-  IDF - Intermediate Distribution Frame
-  CATV / Multi-Media
-  Data Communications
-  Data Communications / Video Conferencing
-  Data / Video Conferencing / CATV / Multi-Media
- T** Telephone Instrument
-  Backbone Data/Video/Voice
-  Workstation/Device Data/Video/Voice
- TD** Telephone Demark
- C** CATV Demark

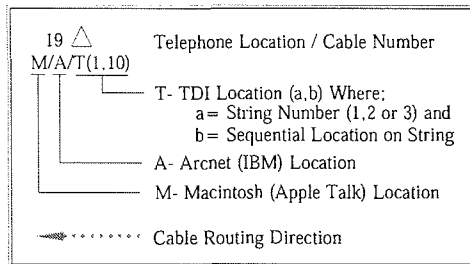
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B. Irving/C. Thompson

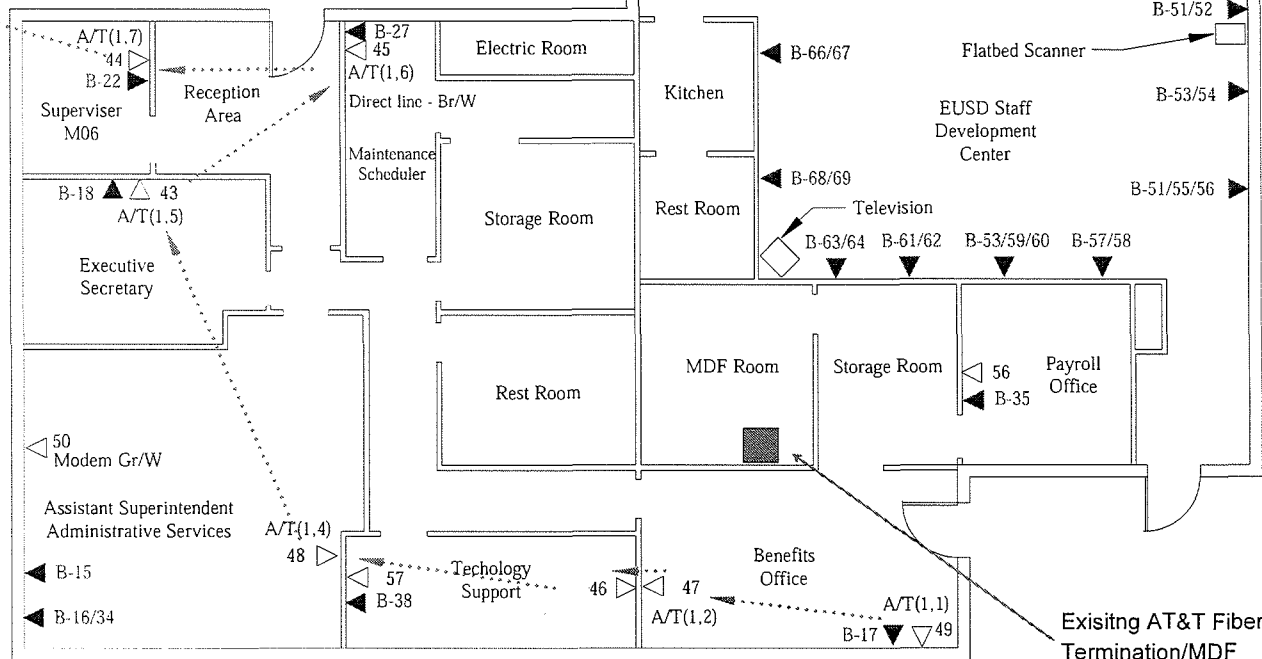
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4/10/98

Prepared By  
**WTA**

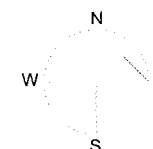
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To Building A.  
1st Floor



Existing AT&T Fiber  
Termination/MDF





Revision Summary		
Revision	Date	Purpose
①	04/21/00	Added IDF-8 & 9, Moved MDF
②	08/01/00	Removed Portable West of Bldg. #4










# Network Design Illustration

## Capri Elementary School

of  
Encinitas Union School District

### Campus Site Plan (Proposed)

#### Legend

-  MDF - Main Distribution Frame
-  IDF - Intermediate Distribution Frame
-  Standard Multi-Media CTP  
2-Category 5 (Data) / 1-Coaxial Cable Ports
-  Enhanced Multi-Media CTP  
1-Fiber Optic / 1-Coaxial /  
2-Category 5 (Data) Ports
-  Single-Media TV/VCR CTP  
1-Coaxial Cable Port
-  Multi-Media TV/VCR CTP  
1-Fiber Optic / 2-Category 5 /  
1-Coaxial Cable Port
-  Video Conferencing (VC)  
1 of the 2 Category 5 Data Ports  
Connected to the Video  
Conferencing Network.
-  Backbone Cable Bundle  
Data/Video/Voice
-  Device Cable Bundle  
Data/Video/Voice

 CATV Demark  Telephone Demark

Created By:  
B. Irving/C. Thompson

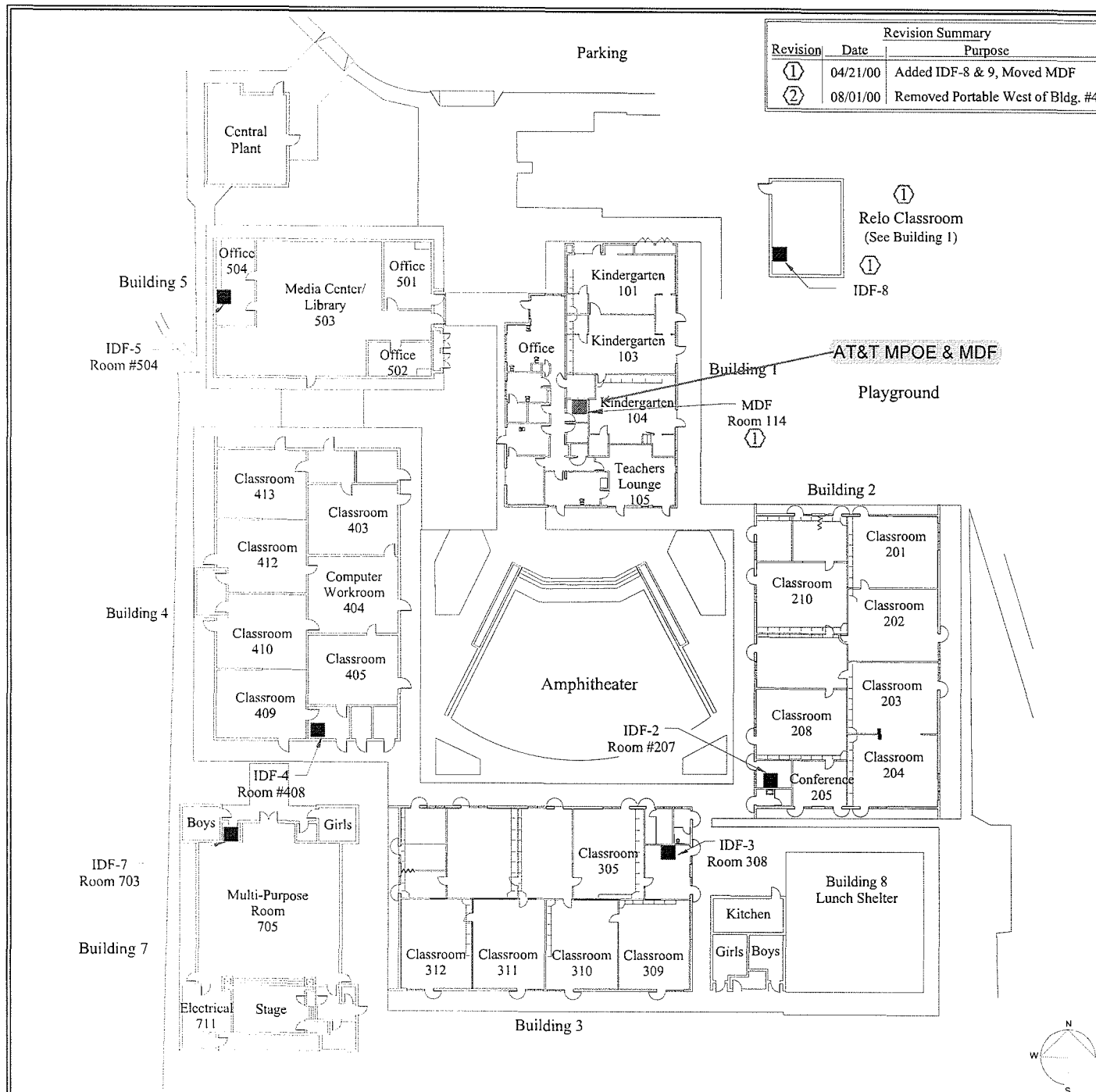
Date:  
04/21/00 ① ②

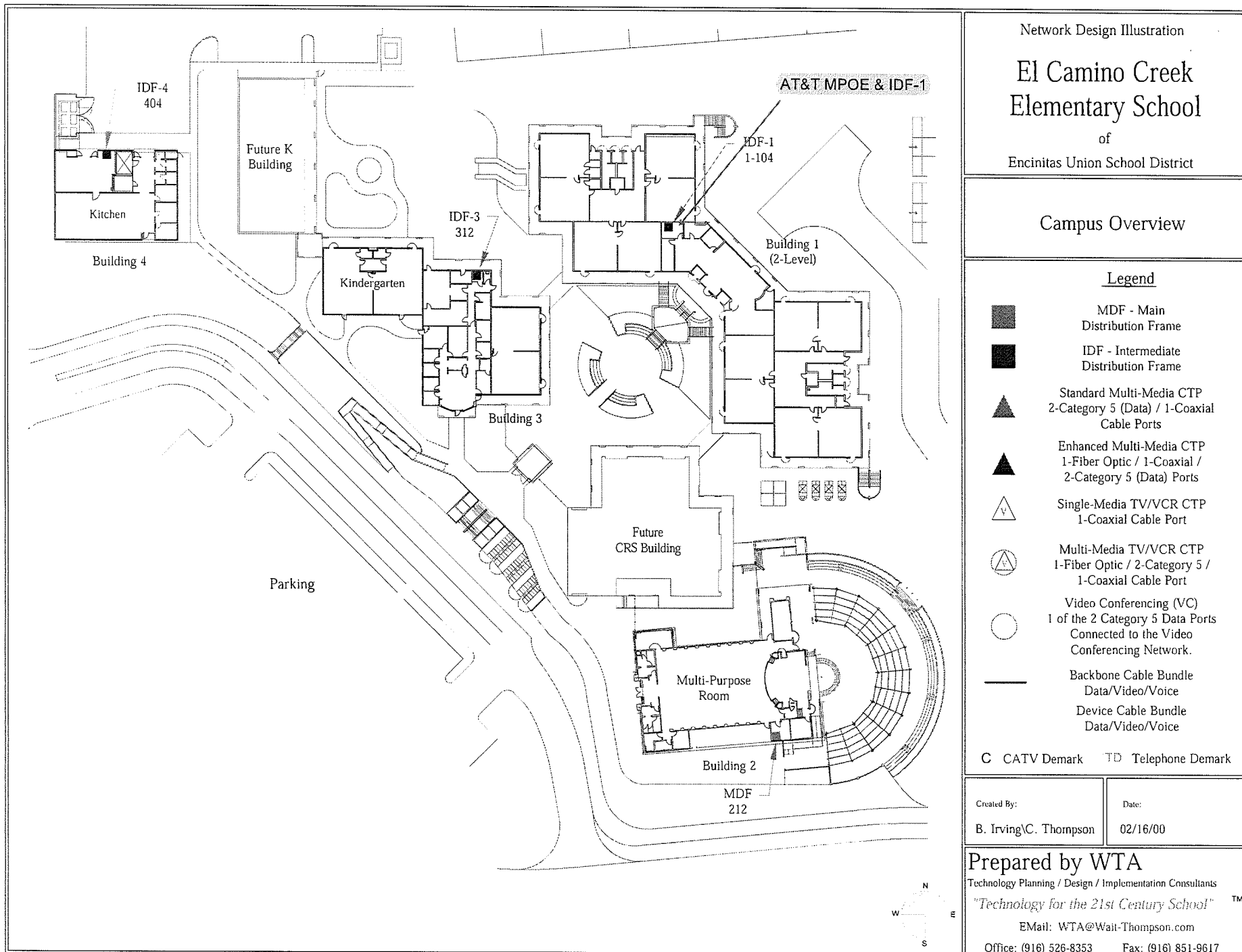
### Prepared by WTA

Technology Planning / Design / Implementation Consultants  
"Technology for the 21st Century School"™

Email: WTA@Wait-Thompson.com

Office: (916) 526-8353 Fax: (916) 851-9617
















# La Costa Heights Elementary School

Encinitas Union School District

## Campus Site Plan (Proposed)

### Legend

-  MDF - Main Distribution Frame
-  IDF - Intermediate Distribution Frame
-  Administrative Multi-Media CTP  
2-Category 5 (Data) / 1-Coaxial Cable Ports
-  Instructional Multi-Media CTP  
1-Fiber Optic / 1-Coaxial / 2-Category 5 (Data) Ports
-  Single-Media TV/VCR CTP  
1-Coaxial Cable Port
-  Multi-Media TV/VCR CTP  
1-Fiber Optic / 2-Category 5 / 1-Coaxial Cable Port
-  Video Conferencing (VC)  
1 of the 2 Category 5 Data Ports  
Connected to the Video Conferencing Network.
-  Backbone Cable Bundle  
Data/Video/Voice
-  Device Cable Bundle  
Data/Video/Voice
-  CATV Demark
-  Telephone Demark

Created By:

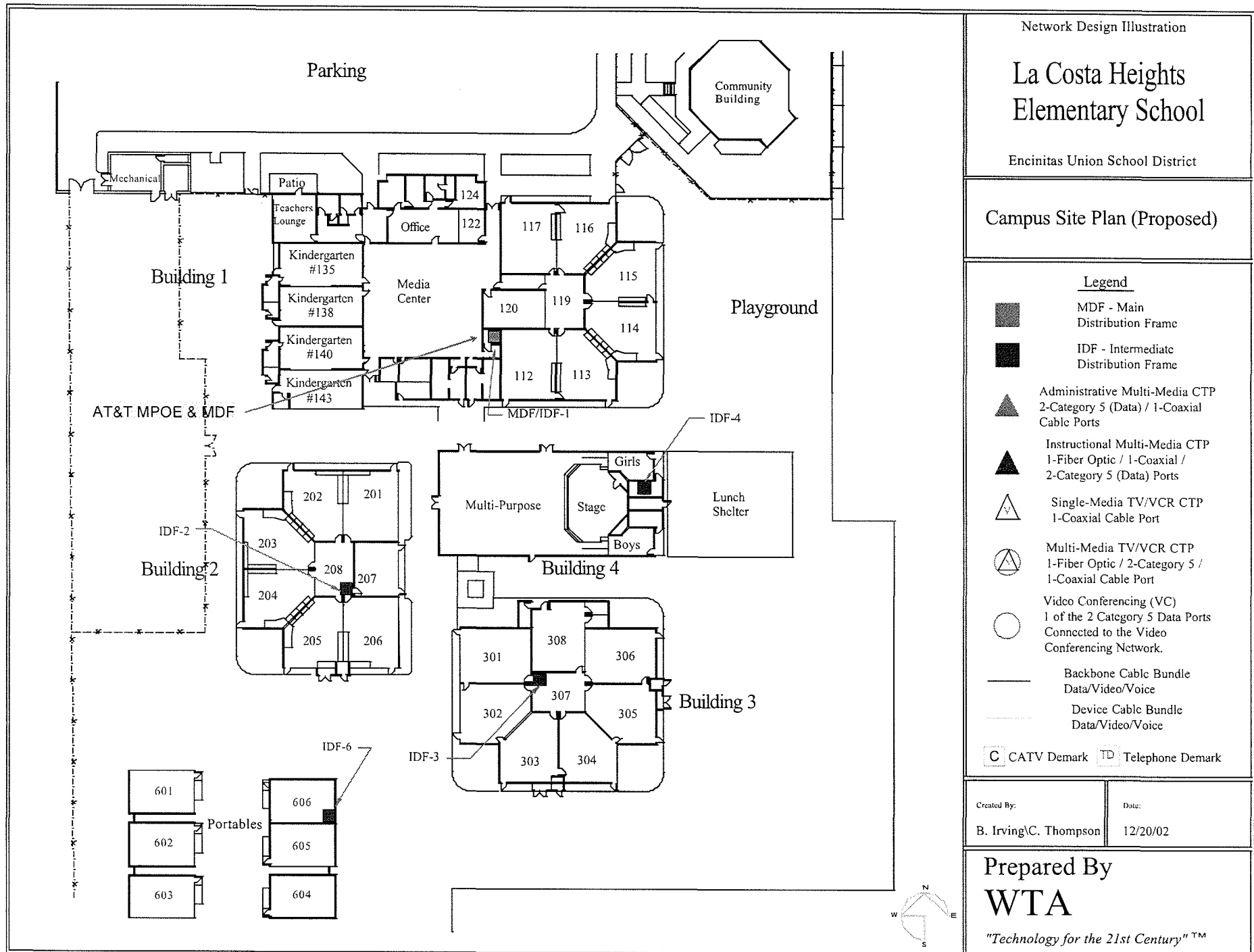
B. Irving/C. Thompson

Date:

12/20/02

Prepared By  
**WTA**

"Technology for the 21st Century"™



# Mission Estancia Elementary School

Encinitas Union School District

## Campus Site Plan (Proposed)

### Legend



MDF - Main  
Distribution Frame



IDF - Intermediate  
Distribution Frame



Administrative Multi-Media CTP  
2-Category 5 (Data) / 1-Coaxial  
Cable Ports



Instructional Multi-Media CTP  
1-Fiber Optic / 1-Coaxial /  
2-Category 5 (Data) Ports



Single-Media TV/VCR CTP  
1-Coaxial Cable Port



Multi-Media TV/VCR CTP  
1-Fiber Optic / 2-Category 5 /  
1-Coaxial Cable Port



Video Conferencing (VC)  
1 of the 2 Category 5 Data Ports  
Connected to the Video  
Conferencing Network.



Backbone Cable Bundle  
Data/Video/Voice



Device Cable Bundle  
Data/Video/Voice



CATV Demark



Telephone Demark

Created By:

B. Irving/C. Thompson

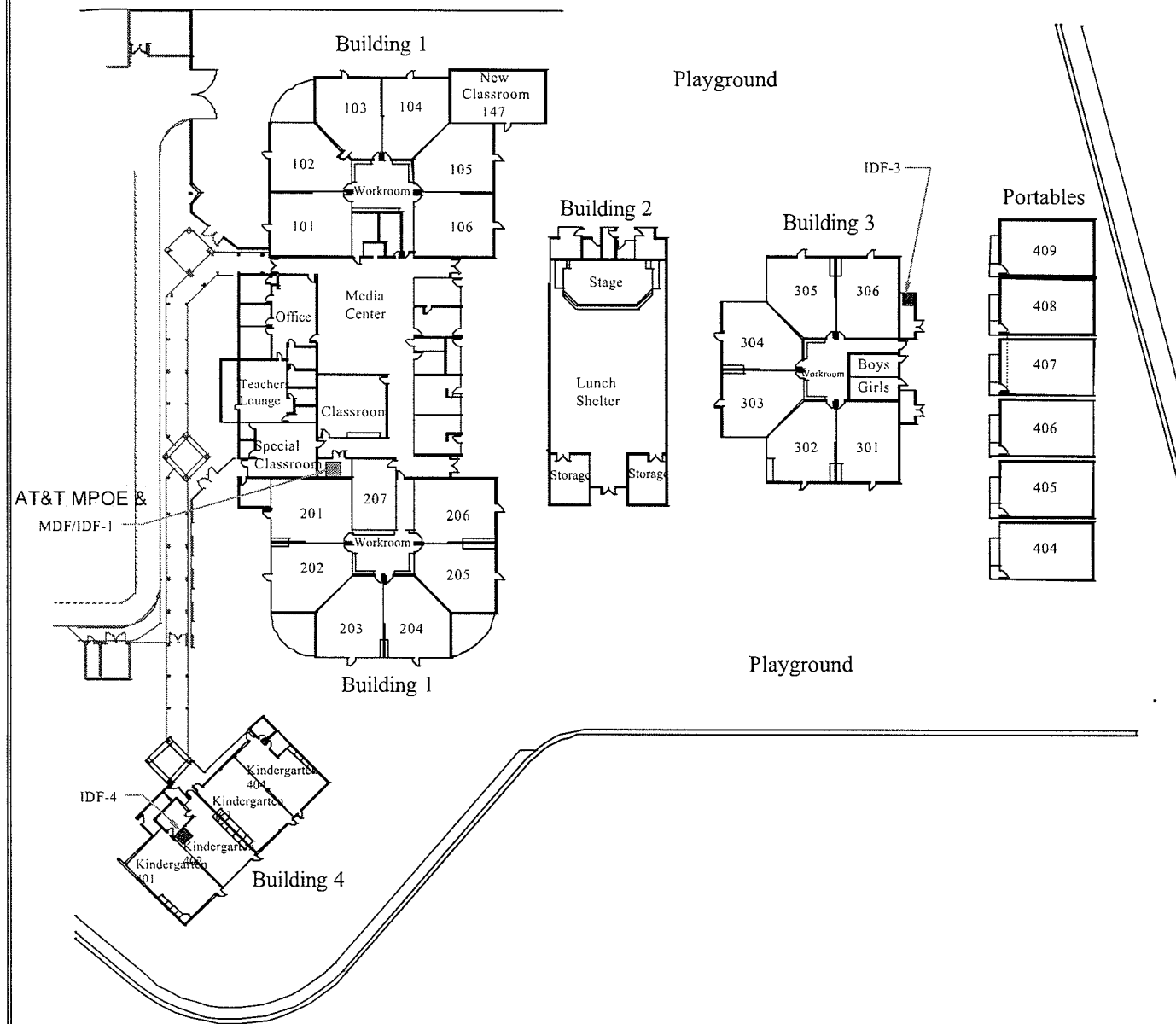
Date:

12/05/02

Prepared By

WTA

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




# Network Design Illustration



## Ocean Knoll Elementary School

Encinitas Union School District

### Campus Site Plan (Post-Modernization) ③

#### Legend

-  MDF - Main Distribution Frame
-  IDF - Intermediate Distribution Frame
-  Standard Multi-Media CTP  
2-Category 5 (Data) / 1-Coaxial Cable Ports
-  Enhanced Multi-Media CTP  
1-Fiber Optic / 1-Coaxial /  
2-Category 5 (Data) Ports
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1-Coaxial Cable Port
-  Multi-Media TV/VCR CTP  
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1-Coaxial Cable Port
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1 of the 2 Category 5 Data Ports  
Connected to the Video  
Conferencing Network.
-  Backbone Cable Bundle  
Data/Video/Voice
-  Device Cable Bundle  
Data/Video/Voice

 CATV Demarc  Telephone Demarc

Created By:

B. Irving/C. Thompson

Date:

03/11/99 ① ② ③

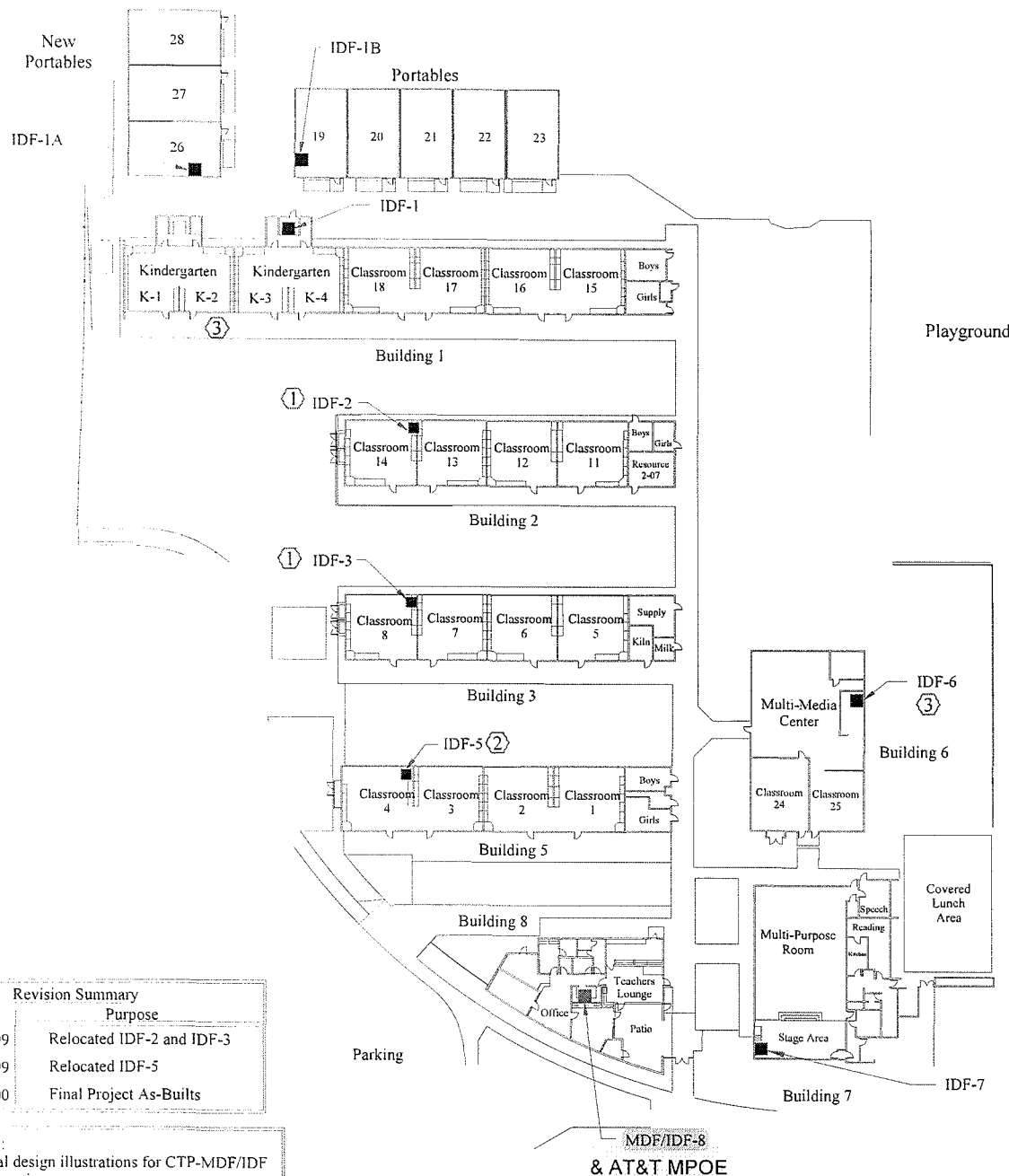
**Prepared by WTA**

Technology Planning / Design / Implementation Consultants

"Technology for the 21st Century School"™

Email: WTA@Wait-Thompson.com

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Revision	Date	Revision Summary Purpose
①	09/10/99	Relocated IDF-2 and IDF-3
②	10/05/99	Relocated IDF-5
③	04/01/00	Final Project As-Built

**Installation Notes:**  
Refer to individual design illustrations for CTP-MDF/IDF connectivity information.

# Network Design Illustration










## Park Dale Lane Elementary School



of

Encinitas Union School District

### Campus Site Plan (Proposed)

#### Legend


-  MDF - Main Distribution Frame
-  IDF - Intermediate Distribution Frame
-  Standard Multi-Media CTP  
2-Category 5 (Data) / 1-Coaxial Cable Ports
-  Enhanced Multi-Media CTP  
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-  Multi-Media TV/VCR CTP  
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Connected to the Video Conferencing Network.
-  Backbone Cable Bundle  
Data/Video/Voice
-  Device Cable Bundle  
Data/Video/Voice

 CATV Demarc  Telephone Demarc

Created By:

B. Irving/C. Thompson

Date:

04/21/00 


### Prepared by WTA

Technology Planning / Design / Implementation Consultants

"Technology for the 21st Century School"™

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Office: (916) 526-8353 Fax: (916) 851-9617

Revision Summary		
Revision	Date	Purpose
	04/21/00	Added IDF-5, Relocated IDF-3

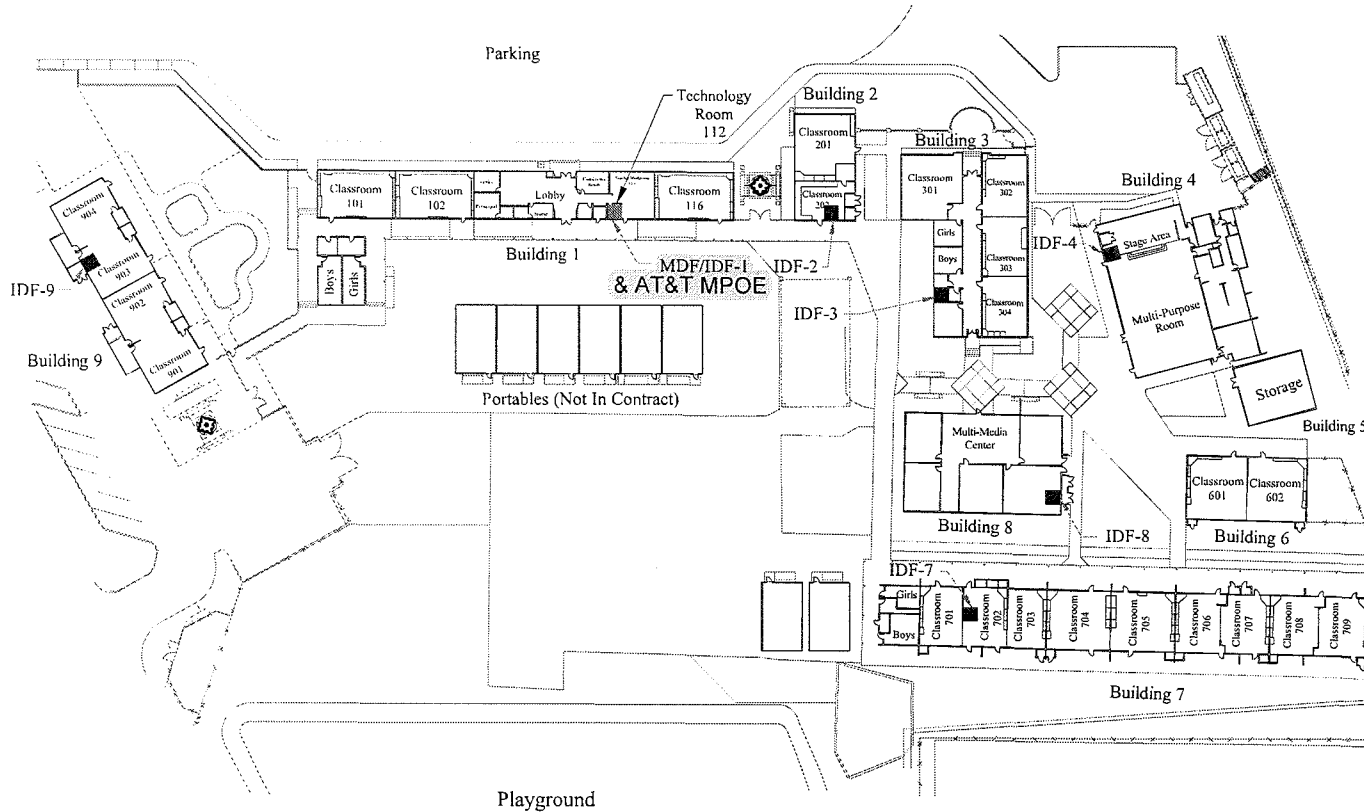


# Network Design Illustration

## Paul Ecke Central Elementary School

Encinitas Union School District

### Campus Site Plan (Proposed)



#### Legend

- MDF - Main Distribution Frame
- IDF - Intermediate Distribution Frame
- Standard Multi-Media CTP  
2-Category 5 (Data) / 1-Coaxial Cable Ports
- Enhanced Multi-Media CTP  
1-Fiber Optic / 1-Coaxial / 2-Category 5 (Data) Ports
- Single-Media TV/VCR CTP  
1-Coaxial Cable Port
- Multi-Media TV/VCR CTP  
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Connected to the Video Conferencing Network.
- Backbone Cable Bundle  
Data/Video/Voice
- Device Cable Bundle  
Data/Video/Voice

C CATV Demark TD Telephone Demark

Created By:

B. Irving/C. Thompson

Date:

03/11/99

Prepared By

**WTA**

"Technology for the 21st Century™"

**Installation Notes:**  
Refer to individual design illustrations for CTP-MDF/IDF connectivity information.

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# **FIBER OPTIC NETWORK PROPOSAL**

**FOR**

**ENCINITAS UNION  
SCHOOL DISTRICT**

**MANAGED WIDE AREA NETWORK**

---

Prepared and Submitted by:

**SUNESYS**

*Office: 888-35-FIBER*

*January 11, 2007*



January 11, 2007

Ms. Andrea Matusek  
Purchasing Supervisor  
Encinitas Union School District  
101 S. Rancho Santa Fe Road  
Encinitas, Ca. 92024

Re: Sunesys Proposal for Encinitas Union School District WAN

Dear Ms. Matusek:

Thank you for the opportunity to present a comprehensive solution for the Encinitas Union School District Wide Area Network Services. Sunesys, Inc. is a registered Telecommunications Provider specializing in the design, construction and maintenance of managed fiber optic network services. We currently maintain over one hundred broadband fiber optic networks for the K-12 market throughout the United States.

**The enclosed proposal is for Managed Fiber Optic Network Services delivering 1Gbps of connectivity from the District Office to each site in the District.**

Once you have a chance to review our proposal, I will look forward to hearing your comments. Our company prides itself on instant customer service so please feel free to call me. If I do not hear from you, I will be in touch in a week or so to follow up and answer any questions you may have. Thank you very much for this opportunity to service the Encinitas Union School District.

Sincerely,



Tom Ross  
Account Manager  
Sunesys, Incorporated  
Spin #143019764 FCCRN # 0011-5887-46  
CPUC # U-6991-C  
888-35- FIBER (3-4237) x 105  
tross@sunesys.com

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**2 – Scope**

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**4 – Staffing Qualifications**

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**6 – Cost Option Summary**

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**7 – Preliminary Fiber Map & Network Diagram**

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**8 – Itemized Listing of Network Components**

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**9 – Service Level Agreement**

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**10 – Sample Contract**

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## Executive Summary

January 11, 2007

Ms. Andrea Matusek  
Purchasing Supervisor  
Encinitas Union School District  
101 S. Rancho Santa Fe Road  
Encinitas, Ca. 92024

Re: Encinitas Union School District WAN  
Executive Summary for the Sunesys Fiber Optic WAN Proposal

Dear Ms. Matusek:

Sunesys is the best qualified firm to provide Managed Gigabit Fiber Optic Network Services for the Encinitas Union School District. The following is an executive summary of our offering and why we feel it is the best solution for the District. The summary shall address our offering, financial stability of the firm, expertise of the staff, proven capability to deliver and the technological advantages.

Offering

The Sunesys solution shall provide the telecommunications service utilizing fiber optic cables connecting the District Office to each of the Schools in the District. The fiber optic cables that deliver the service shall start and finish in the District buildings and shall not be terminated at any intermediate points. The cables shall have an IP transmission of 1000Mbps from the Network Core to each School in the District and the hand-off shall be a 1000Base-SX, 1000Base-T or an auto-sensing 10/100/1000Mbps connection.

Financial Stability of the Firm

Sunesys, Inc. is one of six core companies owned and operated by InfraSource Services, Inc. InfraSource is a leading provider of infrastructure services for electric power, gas, and fiber optics in the United States. Through the collaborative and fully integrated efforts of the highly specialized operating companies, InfraSource is uniquely qualified to provide comprehensive specialty network infrastructure services including design, engineering, program management, procurement, construction, and maintenance on a project or turnkey basis. InfraSource, Inc., a publicly traded NYSE company, employs over 3,500 people with annual revenues of approximately \$1 billion.

Expertise of the Staff

As a result of the Telecommunications Act of 1996 and the associated deregulation of the telecommunications industry, Sunesys was created. Sunesys specializes in the lease of metropolitan telecommunication networks through the utilization of E-Rate funding for the K-12 marketplace. Sunesys has dedicated staff that directly handles every aspect, from design to maintenance, of their fiber optic networks. **Sunesys was awarded the contract to provide managed fiber optic network services to the Fontana Unified, Cucamonga, Ontario-Montclair, Apple Valley and Moreno Valley School Districts in Southern California.**

### Proven Capability to Deliver

Sunesys has a track record that is second to none regarding its capability to deliver high speed fiber optic based telecommunication networks. From networks as large as the City of Philadelphia School District with its 292 buildings and hundreds of miles of fiber to the three building Districts, Sunesys has successfully completed and received E-rate funding for fiber optic based telecommunications services.

### Technological Advantage

The Sunesys network provides the following technological advantages over a traditional service provider:

- Throughput – direct building to building connectivity that does not enter a Cloud
- Secure – physical fiber separation for all School District traffic from other clients
- Reliable – point to point fiber does not enter cloud or have a wireless dependency
- Scalable – future upgrades in bandwidth do not effect monthly cost, cost of GBIC only
- Performance – latency is not an issue it goes from District equipment to District equipment

### Cost

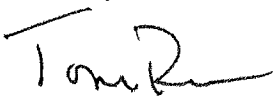
For 1Gbs Point-to-Point connections from the District Office to each site in the District the cost shall be:

<b>Fiscal Year</b>	<b>Sites</b>	<b>Monthly Cost</b>	<b>After E-rate (46%)</b>	<b>After CTF</b>
2007-2012	10	\$32,530.11	\$17,566.26	\$8,783.13
After Term	10	\$9,759.03	\$5,269.88	\$2,634.94

As a partnership with the District, Sunesys has agreed to lower the monthly cost after term to \$9,759.03. The pricing shall be valid up to twenty years and shall be adjusted for the consumer price index.

Once you have a chance to review our proposal, I will look forward to hearing your comments and reactions. Our company prides itself on instant customer service so please feel free to contact me with any questions or comments you may have. Thank you very much for this opportunity to service the Encinitas Union School District.

Sincerely,



Tom Ross

Account Manager

Sunesys, Incorporated

Spin #143019764 FCCRN # 0011-5887-46

CPUC # U-6991-C

888-35- FIBER (3-4237) x 105

tross@sunesys.com

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**Scope**

## Scope

Sunesys, Incorporated shall furnish the Encinitas Union School District with a complete turnkey solution for Managed Gigabit Fiber Optic Network Services. Our services shall include the system design/engineering, any construction that may be necessary to establish service and maintenance of the connectivity.

### System Design/Engineering

Sunesys shall provide complete design services. The services shall be:

Fiber Route:	<p>The Fiber Route consists of all buildings, streets, poles, conduits and manholes used for routing connectivity. The routing shall include:</p> <ul style="list-style-type: none"><li>• Overall route survey</li><li>• Trunk and lateral cabling distances</li><li>• Pole &amp; Span Measuring</li><li>• Conduit Evaluations</li><li>• Drafting and Strand Maps</li><li>• Ownership Submittals</li></ul>
Single Line Backbone:	<p>The Single Line Backbone determines the strand counts, cabling type and splice configurations. Sunesys shall work with the School District staff to determine the appropriate:</p> <ul style="list-style-type: none"><li>• Strand counts</li><li>• Cabling type</li><li>• Splice configurations</li></ul>
Make Ready:	<p>Make Ready consists of all engineering and submittals for making the system compliant with the utilities guidelines for attaching or having fiber cable in the communications space. The make ready engineering shall specify:</p> <ul style="list-style-type: none"><li>• Cable clearances</li><li>• Utility pole replacement</li><li>• Conduit and pole permits</li></ul>
Service Entrance:	<p>Service Entrance Engineering determines where the service enters and terminates in a structure. The Service Entrance Engineering shall include:</p> <ul style="list-style-type: none"><li>• Service Entrance Surveys</li><li>• Service Entrance Drawings</li></ul>

- Loss Estimates:      The Loss Estimates shall be calculations based on the actual field conditions that will show the estimated loss and dispersion characteristics for each link. The calculations show:
- Fiber Optic Attenuation
  - Fiber Optic Connector Loss
  - Splice Loss
  - Total Passive System Attenuation
  - Chromatic Dispersion

### **System Construction**

Sunesys, Inc. shall provide all construction and make ready to establish the service.

The following procedures shall be taken prior to installation:

- Develop a comprehensive overall design package
- Obtain all necessary permits
- Organize and direct pre-construction meetings
- Obtain all necessary insurance and bonding

Our services during the installation phase shall include:

- Initial kick-off review meeting with School District
- Site visits with School District
- Contract schedule and equipment delivery monitoring
- Shop drawings and submittals review
- System design updates
- Make-ready pole work
- Demarcation extensions in each building to the District equipment racks
- Furnish and install managed data equipment and fiber terminating shelves.
- System stranding and accessories
- Optical cabling and accessories to provide 6 strands of singlemode fiber to each building.
- Splicing
- Final system testing
  - Power Meter
  - OTDR

Our services after the installation is complete are:

- Final review meeting with School District
- Test data review with School District
- Develop and publish as-built drawings
- Final report certifying the service



## **System Maintenance**

The largest risks associated with fiber optic services are DOWNTIME and the additional COSTS associated with re-establishing service. The downtime of fiber services is generally caused by weather, human factors and other construction projects.

To mitigate the risk of downtime, Sunesys provides a Service Level Agreement with every contract. The Agreement guarantees the Sunesys emergency call out plan of action. Furthermore, the Sunesys contract is all-inclusive such that the School District shall NOT incur any additional expenses required for downtime repair.

In the event of loss of communication to any site, Sunesys will respond promptly without regard to the time of day or day of week, including holidays. Repair shall begin within 4 hours of the Districts, Utility Companies or the Municipalities' service call. Repair personnel as required, shall arrive at the installation site within two hours of the School Districts, utility companies or the municipalities' service call. The maximum time of repair, once on site, shall be 24 hours.

## **Installation/Delivery Schedule**

The installation interval for completion of connecting all District Buildings is estimated to be 9 months from the receipt of a signed contract and shall be coordinated with the Encinitas Union School District. The major tasks shall be broken down as follows:

### Engineering

Pole & Conduit Surveys	14 days
Preliminary Client Route Review	1 day
Span Measuring	23 days
Drafting	24 days
Pole Submittals	32 days

### Construction

Perform Make Ready	76 days
Install Aerial Strand	44 days
Install Aerial & UG Strand	53 days
Splicing	9 days

### Building Entries

Survey Building	20 days
Drafting	12 days

Installation	30 days
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Implementation

Testing	20 days
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Final Client Review	8 days
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Turnover	4 days
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Please note that a number of these tasks are performed simultaneously and therefore the sum of the days will equal approximately the 9 month, 270 day time frame.

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## Organization Capabilities

## **Organization Capabilities**

### **Firms History**

Sunesys, Inc. is one of six core companies owned and operated by InfraSource Services, Inc. InfraSource is a leading provider of infrastructure services for electric power, gas, and fiber optics in the United States. Through the collaborative and fully integrated efforts of the highly specialized operating companies, InfraSource is uniquely qualified to provide comprehensive specialty network infrastructure services including design, engineering, program management, procurement, construction, and maintenance on a project or turnkey basis. InfraSource, Inc., a publicly traded NYSE company, employs over 3,500 people with annual revenues of approximately \$1 billion.

Sunesys is a leading provider of Managed Fiber Optic Network Services. As purely a fiber optic based provider, Sunesys has been able to work with hundreds of Districts on providing and maintaining their connectivity

The Sunesys history extends back to 1979 when two cousins formed Coleman Excavating. Over the next several years the company evolved from residential to carrier construction. In 1983 they incorporated as Blair Park Services, Inc. Blair Park Services specialized in underground cable installation for CATV carriers. In the middle of the 1980's, the company continued to receive new carrier contracts and expanded by adding an aerial construction division.

With the addition of aerial line crews, Blair Park Services further diversified by working for both CATV and Telecommunications carriers. The telecommunications contracts quickly outpaced the CATV contracts and Blair Park Services was awarded extensive aerial and underground construction work for Bell of Pennsylvania (now Verizon).

In 1986, at the request of their clients the company began to install fiber optic cabling. As pioneers in this new medium, the company learned all phases of fiber construction and maintenance. This propelled Blair Park as the fiber optic contractor of choice in the eastern Pennsylvania and New Jersey area.

In 1990 the company acquired a utility engineering firm that designed, engineered and project managed cable and telecommunications projects. With the addition of this group, Blair Park Services was able to offer design, construction and project management of large scale fiber deployments.

The engineering department was further expanded by the acquisition of an optical systems integration group. These four gentlemen designed, configured and installed wide area network optical switching gear. They hold certifications from most of the optical manufacturers. Although the engineering department has the expertise of optical equipment, the company still only designs, installs and maintains dark fiber. With the combination of engineering, optical equipment and construction, Blair Park was uniquely positioned to serve the new entrants to the telecommunications market with high quality turnkey solutions.

As a result of the Telecommunications Act of 1996 and the associated deregulation of the telecommunications industry, Blair Park Services further diversified by establishing a new division called Sunesys. Sunesys specializes in Managed Fiber Optic Network Services for the K-12 Market. Sunesys was quickly awarded the contract for the City of Philadelphia School District connecting over 290 buildings. Since its inception, the Sunesys group has leased over 5000 miles of fiber and provides maintenance and emergency response for those networks even today.

Due to their success, InfraSource Services, Inc acquired Blair Park Services and Sunesys in 2003. InfraSource Services has provided Sunesys with a corporate infrastructure to expand their fiber optic network leadership from the northeast United States to all of North America. Through the financial stability of a publicly traded parent company, national presence with offices located throughout the United States, lower cost of ownership for our services through the synergistic effects of the InfraSource subsidiary companies and our technical leadership and proven success in the managed fiber field Sunesys is the perfect partner for the Encinitas Union School District.

In 2006 Sunesys expanded into the California market. We have been awarded the contracts for managed fiber optic network services for the Rancho Cucamonga, Fontana Unified and Ontario-Montclair School Districts in California.

#### **Business Health**

Sunesys, Inc. being a part of a publicly traded NYSE company, that employs over 3,500 people with annual revenues of approximately \$1 billion has the financial strength and corporate viability to be the perfect partner with the Encinitas Union School District for a multiple year telecommunications agreement. Sunesys, Inc. being a part of a publicly traded NYSE company has to make all of their financial information available to the public and approved by the SEC. Sunesys has received approximately \$40.5 million in revenues for 2005 and an income

of approximately \$17 million. The following table is the detailed financials for Sunesys.

For the Year Ended	
December 31, 2005	
	<b>Sunesys</b>
	in thousands
Revenues	40,511
Income (loss) from operations as adjusted	17,335
Depreciation	3,524
Amortization	—
Total assets	92,430
Capital expenditures	15,861
<b>reconciliation:</b>	
Income (loss) from operations as adjusted	17,337
Less: Amortization	—
Income (loss) from operations	17,337
Interest income	1
Interest expense and amortization of debt discount	-241
Other income (expense), net	-26
Income (loss) before income taxes	17,071

The financial statements can be verified in the public 10-K fiscal report for InfraSource with Sunesys broken out as “Telecommunications” available at:

<http://www.sec.gov/edgar/searchedgar/companysearch.html>

Search company name: InfraSource Services

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## Staff Qualifications

## **Staff Qualifications**

### **Staffing and Resumes**

The staffing and resume portion of this proposal provides information about the staff proposed to complete the major tasks that would be a part of this service:

- Account Manager
- Project Management
- Corporate Sponsor
- Legal
- Engineering
- Right of Way
- Make-Ready
- Utility Coordination
- Aerial Construction
- Underground Construction
- Splicing
- Terminating
- Service Entrance
- Demarcation Extension
- Testing
- Maintenance
- Procurement

#### *Account Manager*

Mr. Tom Ross, Account Manager, shall be the point of contact for Encinitas Union School District. Tom has over 18 years of telecom experience including National Accounts manager with WilTel and Signature Accounts Executive with AT&T.

#### *Vice President*

Mr. Brian Quigley, Vice President, oversees the West Coast sales and operations and shall have supervisory responsibility for the project. He has over 11 years experience designing and integrating fiber networks for voice, video and data applications.

#### *Project Management*

Mr. Scott Grimes, Project Manager, shall be the primary construction contact for the project. Scott has over 10 years of experience in engineering, design and construction of fiber optic networks and shall be responsible for overall project coordination and directing field operations.



#### *Corporate Sponsor*

Mr. Alan Katz, Senior Vice President shall be the corporate executive in charge of the overall responsibility of the project. Mr. Katz has led the construction and engineering activities for Sunesys for the past 6 years. He has personally overseen the construction of over 1200 miles of fiber plant in the last three years.

#### *Legal*

Attorney Paul Bradshaw shall support the team and Encinitas Union School District in all contractual issues.

#### *Engineering*

Mr. Chris Mumber shall be responsible for all items pertaining to the design and engineering of the network. Mr. Mumber oversees a staff of drafters and designers that shall provide all engineering and drafting services.

#### *Right of Way*

Mr. Mark Caldwell shall be responsible for managing the relationship of agreements with the municipality, utilities and others on the use of right-of-way. He shall be responsible for payment and administration of all annual right-of-way and annual maintenance charges to all appropriate parties.

#### *Make-Ready*

Infrastructure make-ready work that may need to occur on the utility poles and conduits is generally completed by a sister company of Sunesys, an electrical subsidiary of InfraSource Services. This is a significant cost-reduction and time savings device for Sunesys. However, if the local utility companies require that their sub-contractors complete all make-ready work then Sunesys shall utilize their subcontractors at no additional cost to Encinitas Union School District.

#### *Utility Coordination*

Mr. Dave Davis and his staff shall handle entering into a support structure agreement with the pole or duct owner and coordinating the installation of the infrastructure with all utilities. He shall be responsible for the MAA (municipal access agreement) for deploying the MAN network, including, but not limited to, all upfront insurance, liability, records and drawings required by the municipality.

#### *Aerial/Underground Construction*

Mr. Jack Coleman shall handle any aerial and underground construction that may be required to establish the network. His staff of construction managers and linemen controls the construction of all Sunesys fiber optic plant on a nationwide basis.

#### *Splicing and Terminating*

Mr. James Spurrier shall handle the splicing, terminating and testing of the fiber optic network.

#### *Service Entrance*

Sunesys generally uses local "Sunesys Certified" subcontractors to complete service entrance work required to enter each building. This allows the use of local work force that lowers the overall cost to Encinitas Union School District while maintaining quality control from the Sunesys project manager.

#### *Demarcation Extension*

Sunesys shall extend all communications service from the point of entrance to the equipment location via conduit, a major differentiator from other telecommunications providers. Sunesys generally uses local "Sunesys Certified" subcontractors to complete demarcation extension work. This allows the use of local work force that allows the overall cost to Encinitas Union School District to be lower while maintaining quality control from the Sunesys project manager.

#### *Testing*

Sunesys employees shall test and document all infrastructure that is required to provide the service.

#### *Maintenance*

Sunesys employee's local to the network shall provide the system service and maintenance. In addition the system shall be actively monitored by the Sunesys helpdesk 24 x7 x 365.

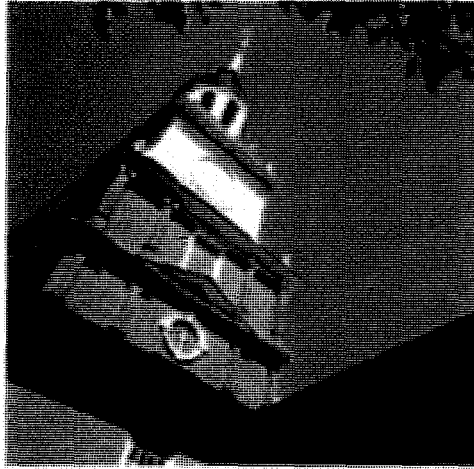
#### *Procurement*

The procurement of material for this project shall be coordinated, received and documented by Sunesys employees. Sunesys shall use a Diversity Business Enterprise for a majority of the products required to establish service.

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## References

## Philadelphia School District Metropolitan Area Network



<b>Sites:</b>	292
<b>Approximate Value</b>	17 million
<b>Bandwidth:</b>	OC192
<b>Principal in Charge:</b>	Alan Katz
<b>Reference:</b>	Jennifer Gardner 215-400-5013

The Philadelphia School District is the largest District in the State of Pennsylvania and the seventh largest in the nation by enrollment, serving a racially and ethnically diverse student population

The District consists of 177 elementary schools, 43 middle schools, 36 neighborhood and magnet high schools, 8 vocational-technical schools and 9 regional offices. The District currently employs 21,580 total positions, including 11,141 classroom and assistant teachers (K-12) and department heads; 1,798 full- and part-time classroom and instructional assistants; 998 security and non-teaching assistants; 494

counselors and librarians; 432 health providers, psychologists, and therapists; 473 principals and assistant principals; 2,835 maintenance and custodial staff; 1,176 bus drivers and bus attendants; 719 secretarial and clerical workers; and 158 executive management, area academic officers, directors, assistant directors, and administrative assistants. The staff is responsible for the education of the 214,350 students.

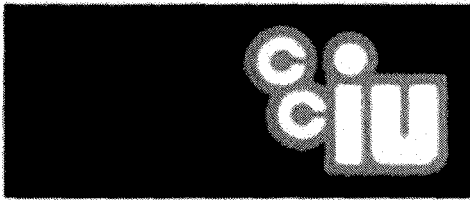
Sunesys, Incorporated is responsible for the construction and maintenance of this MAN. The MAN provides connectivity through four core rings between 22 sites with point-to-point spurs out to the remaining 270+ facilities. The optical network replaced the District's 297 circuit frame relay wide area network and voice network.

### Optical Connectivity

The core technology is an OC192 SONET based network utilizing Nortel Networks electronics. The ring is connected between the core 22 sites using Optical Ethernet. The remaining 270 sites are lateral connections from each of the core nodes. The equipment provides a secure optical Ethernet solution – including Nortel Networks OPTera Metro 3500 Multiservice Platform with Resilient Packet Ring (RPR), Nortel Networks Passport 8600, and Nortel Networks Contivity VPN (virtual private network).

Four Resilient Packet Rings (RPRs) are functioning to support the voice, video and data traffic. The data traffic utilizes two rings, primary and secondary. The voice traffic utilizes one resilient packet ring that is a port based layer 2 vlan. The final RPR is reserved for video and security that is IP based and utilizes two subnets.

## Chester District Intermediate Unit Metropolitan Area Network



**Districts:** 12  
**Approximate Value:** 5 million  
**Principal in Charge:** Alan Katz  
**Reference:** Mr John Branson  
484-237-5056

The Chester District Intermediate Unit (CCIU) is a regional education service agency that provides educational, technological and administrative services to the schools and communities of Chester District, Pennsylvania. It is comprised of the following:

- Avon Grove School District
- Coatesville Area School District
- Downingtown Area School District
- Great Valley School District
- Kennett Consolidated School District
- Octorara Area School District
- Owen J. Roberts School District
- Oxford Area School District
- Phoenixville Area School District
- Tredyffrin/Easttown School District
- Unionville-Chadds Ford School District
- West Chester Area School District

Sunesys, Inc designed, built and maintains this private fiber optic network connecting all 12 Districts, four universities, a library, three local government buildings, two arts and technology centers, a child and career development center, and a center for alternative education. The network consists of over 255 miles of fiber.

The network, utilizing IP telephony and video conferencing solutions from Cisco Systems, is one of the most technologically advanced in the

state of Pennsylvania. The advanced network offers students, faculty and the community new opportunities to communicate through such technological innovations as international video conferencing, distance or e-learning, electronic field trips, video-on-demand, real-time video streaming, on-line course work, and real-time mentoring.

John Branson, director of the Educational Service Center at the Chester District Intermediate Unit, made the decision to connect to 12 when the Intermediate Unit. "All the districts in the District had high-speed networks, and we'd already been involved in distance learning through our ISDN lines," Branson said. "We wanted to offer [Web-based] videoconferencing from the classrooms."

Branson's immediate thought was to connect Chester's world-language classes with native-speaking partners. The first experience was a connection with French sociology students at the University of Paris, but Branson feels the most successful project was an authentic, real-time cultural exchange between middle-school Spanish-language students in Chester and in Chile, as part of the World Tour Project. One Downingtown teacher found the experience so inspiring that she is now on special leave teaching 10 miles away from the school of the Chilean students whom her students met online.

For more information on this and other fiber MAN projects, please contact your local Sunesys sales representative.

## **Altoona Area School District Metropolitan Area Network**



<b>Sites:</b>	18
<b>Approximate Value</b>	3 million
<b>Bandwidth</b>	1000Mbps
<b>Principal in Charge:</b>	Brian Quigley
<b>Reference:</b>	Mr. Bryce Cossitor 814-940-6974

The Altoona Area School District has established a reputation for innovation and excellence. With a student population of 8,400, Altoona Area is one of Pennsylvania's largest school districts. It encompasses 60 square miles and includes the city of Altoona, Logan Township and a small portion of Tyrone Township. The District operates ten elementary schools, four secondary schools and eight support sites.

Sunesys, Incorporated is responsible for the construction and maintenance of this 19-mile fiber optic ring connecting all of the schools in the District.

### **Data Connectivity**

The data connectivity is a completely redundant 1000Mbps Ethernet based ring with layer 3 routing switches at each location. The core of the network terminates in the High School in a Cisco 4507 with redundant power supplies and

switch engines. The core switch in each building has dedicated 1000Mbps links to each IDF. All School District servers have been relocated to the High School Data Center.

### **CATV Connectivity**

The High School has a television studio where students develop and broadcast their own programming. The fiber optic ring has been expanded to connect both of the middle schools to the High School CATV system. All CATV head-end functions are controlled and broadcast from the High School to the two Middle Schools in the District.

### **Reverse Video Connectivity**

The fiber optic ring has been expanded so that the two Middle Schools can have live cameras connected into the classrooms and the video feed sent to the High School. All classroom and auditorium activities can be sent from the remote locations to the High School Headend and broadcast to the District.

### **Internet Connectivity**

A point-to-point 1000Mbps connection was provided from the High School to the Districts Internet Service Provider at the Center for Advanced Technology. The Center for Advanced Technology provides a DS-3 internet connection.

### **Security Connectivity**

The District is in the process of expanding the fiber optic MAN to provide connectivity to the athletic park for closed circuit security camera surveillance. The security cameras can be viewed "realtime" from any location in the District by utilizing a networked PC and the appropriate username and password.

## **Mt. Lebanon School District Metropolitan Area Network**



**Sites:** 10  
**Bandwidth:** 1000Mbps  
**Principal in Charge:** Brian Quigley  
**Reference:** Mr. Chris Stengel  
412-344-2089

Mt. Lebanon is a Pittsburgh suburb with a national reputation for excellence. Located six miles from downtown Pittsburgh, this 6.0 square mile, predominantly residential community is home to 34,000 residents. The population is highly educated, with most adults having a college education. The community has a strong commitment to education and is actively involved in an educational partnership with the school district.

The School District is a nationally recognized and award-winning school district. The district operates seven elementary schools (grades k-5), two middle schools (grades 6-8) and a high school (grades 9-12). The district serves 5,616 students. The combination of a highly trained staff with educated and committed families results in students who achieve local, state and national honors in instructional, athletic and arts forums.

Sunesys, Incorporated is responsible for the construction and maintenance of a 9-mile

1000Mbps Metropolitan Area Network in a physically diverse ring configuration.

The ring connects all ten locations in the District with dedicated connectivity for separate voice, video and data. The system consists of the following:

### **Data Connectivity**

The data connectivity is a completely redundant 1000Mbps Ethernet based ring with layer 3 Cisco switches at each location. The core of the network terminates in the High School data center. All School District servers have been relocated to the High School Data Center.

### **Internet Connectivity**

The fiber optic ring was expanded to provide a direct connection to an Internet Service Provider that is providing an Ethernet based 10Mbps connection.

### **PSTN Connectivity**

The District utilizes a Consolidated IP Voicemodel with all primary connectivity to the phone company through multiple PRI connections at the High School. Each remote location has backup central office lines for disaster recovery.

### **Telephone System**

The telephone system was converged to one district wide system connecting all buildings in the District. The system has redundant processing and DC power supplies at the High School. It allows dial by name, paging, forwarding and conference calling throughout the entire District utilizing one database.

### **Enhanced 911 System**

An enhanced 911 system was implemented over the fiber optics allowing the emergency services to have student emergency locations identified immediately upon dialing.

Other Experience in the Educational Market

	Applicant Name	Year	Contact	Sites	Phone
1	AVON GROVE SD	2000	Linda Simasek	4	610-869-2441 x 1030
2	BENSALEM TWP SD	2000	Roy Britton	9	215-750-2800 x 1621
3	KENNETT CONSOLIDATED SD	2000	Richard Oliver	5	610-444-4136
4	METHACTON SD	2000	Frank Kremm	7	610-489-5016
5	RADNOR TOWNSHIP SD	2000	Bryan McCook	6	610-688-8100 x 6133
6	ROSE TREE MEDIA SD	2000	Kirk Messick	6	610-627-6000
7	WILLIAM PENN SD	2000	Jeff Cuff	11	610-284-8010 x 227
8	CHESTER COUNTY IU	2000	John Branson	53	484-237-5056
9	BRISTOL TWP SD	2001	Frank Koziol	12	215-547-3200 x 221
10	COATESVILLE AREA SD	2001	Abdallah Hawa	3	610-383-7900 x 4083
11	DOWNINGTOWN AREA SD	2001	Buck Jones	2	610-269-8460
12	LOWER MEENCINTAS UNIONN SD	2001	Chris Stoffere	10	610-645-1962
13	PHILADELPHIA SD	2001	Jennifer Gardner	292	215-875-2323
14	ALTOONA AREA SD	2002	Bryce Cossitor	22	814-940-6974
15	AMBRIDGE AREA SD	2002	James LaSalle	7	724-266-2833
16	CHESTER-UPLAND SD	2002	Larry Jennings	2	619-447-3600 x 3552
17	GATEWAY SD	2002	Dennis Houlihan	7	412-372-5872
18	INTERBORO SD	2002		8	
19	MARPLE NEWTOWN SD	2002	Donald Ash	6	610-359-4212
20	RIVERVIEW SD	2002	Bob Dunkle	4	412-828-1800 x 4400
21	CENTRAL BUCKS SD	2003	Ray Kase	24	267-893-2020
22	HATBORO-HORSHAM SD	2003	E. Wagner	7	215-672-5660 x 170
23	MT LEBANON SD	2003	Chris Stengel	10	412-344-2089
24	PENN DELCO SD	2003		6	
25	CHICHESTER SD	2004	Roberta Gruber	3	610-485-6881 x 5915
26	COLONIAL SD	2004	Joe Bickleman	4	610-834-1670
27	COUNCIL ROCK SD	2004		2	215-944-1000
28	GETTYSBURG AREA SD	2004	Jeff Williams	3	717-334-6254
29	HARRISBURG CITY SD	2004	William Gretton	18	717-703-4026
30	MAPLE SHADE TOWNSHIP SD	2004	Rudy Avizius	5	856-779-1750 x 223
31	MONTGOMERY COUNTY IU	2004	S. Wedemeyer		610-539-8550
32	PISCATAWAY TWP SD	2004		10	
33	WEST CHESTER AREA DISTRICT	2004	June Garwin	15	484-266-1050
34	SOMERSET AREA SD	2005	Julio Velasquez	2	814-444-3260
35	ABINGTON SD	2005	L. Goldberg	11	215-517-2700
36	LINDENWOLD BOROUGH SD	2005	Sam Delfino	5	856-741-0320 x 1047
37	PLUM BOROUGH SD	2005	Ed Hela	7	412-789-6319
38	RAHWAY SD	2005	Barbara Martin	6	732-396-2614
39	SHALER AREA SD	2005	Dan Charny	9	412-492-1200 x 2825
40	SPRING FORD AREA SD	2005	Shirley Rhoads	10	610-705-6137
41	STEEL VALLEY SD	2005	Mike Bichko	5	412-464-3606
42	SWEDESBO-WOOLWICH SD	2005	Bob Murphy	3	856-241-1552
43	WICOMICO COUNTY SD	2005	Mark Miller	18	410-677-4571
44	ALBERT GALLATIN AREA SD	2005	Steve Smolenksi	10	724-564-1489
45	CHEROKEE COUNTY SD	2006-UC	Tim Feltner	38	770-479-1871



46	BALDWIN SD	2006	Tim Winner	5	412-885-7843
47	ALIQIPPA SD	2006-UC	Frannie Brown	2	724-857-7506
48	HOPEWELL SD	2006-UC	Susan Todd	4	(724) 375-7765
49	FONTANA UNIFIED SD	2006-UC	David Araujo	44	909-357-5000 x 7049
50	CUCAMONGA SD	2006-UC	Edwin Lee	5	909-987-8942 x 244
51	ONTARIO-MONTCLAIR SD	2006	Hal Shimmin	2	909-418-6394
52	SOUTH ALLEGHENY SD	2006	Joel Tachoir	3	(412) 675-3070 x 1104
53	FREEDOM AREA SD	2006-UC	Noriene Plate	3	724-775-7644
54	IU 27 (Beaver County IU)	2006-UC	Eric Rosendale	14	724-774-7800 x 3036

\*UC is still under construction

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## Cost Option Summary

## Cost Option Summary

### ***Option 1 – No Upfront Payment – 5 Year Term***

#### ***5 Year Contract***

A five year contract with a monthly service fee of thirty-two thousand five hundred thirty dollars and eleven cents (\$32,530.11). The District shall have an option to extend the contract for another 60 month term, for up to 15 additional years, for a REDUCED monthly service fee of nine thousand seven hundred fifty-nine dollars and three cents (\$9,759.03).

Utilizing 46% E-rate funding the District would be required to pay:

- Monthly Service 1-60 after E-rate and CTF -\$8,783.13
- After month 60 after E-rate and CTF - \$2,634.94

### ***Option 2 – No Upfront Payment – 10 Year Term***

#### ***Ten Year Contract***

A ten year contract with a monthly service fee of twenty-one thousand four hundred and forty-two dollars and sixty-two cents (\$21,442.62). The District shall have an option to extend the contract for another 120 month term, for up to 10 additional years, for a REDUCED monthly service fee of nine thousand seven hundred fifty-nine dollars and three cents (\$9,759.03).

Utilizing 46% E-rate funding the District would be required to pay:

- Monthly Service 1-120 after E-rate and CTF - \$5,789.51
- After month 120 After E-rate and CTF- \$2,634.94

Please note that for all options, after the initial term the monthly service fee shall be adjusted annually according to the consumer pricing index (CPI).

For all options, all of the above costs are eligible for consideration for E-rate reimbursement as a priority 1, telecommunications service. Sunesys, Inc. is a registered Telecommunications Provider and has extensive experience with the Universal Services Fund (E-Rate) program. Our SLD spin number is #143019764 and FCC registration is # 0011-5887-046. Further, Sunesys certifies that it has not been convicted of bid-rigging, it practices an equal rights and non-discriminatory work place and screens workers for drugs.

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## Itemized Listing of Network Components

Location	Manufacturer	Part #	Description	Qty
Capri	Metrobility	R-AAR1000	2 Slot Chassis	1
Capri	Metrobility	R-152-1D	1000TX to LX	1
El Camino Creek	Metrobility	R-AAR1000	2 Slot Chassis	1
El Camino Creek	Metrobility	R-152-1D	1000TX to LX	1
Flora Vista	Metrobility	R-AAR1000	2 Slot Chassis	1
Flora Vista	Metrobility	R-152-1D	1000TX to LX	1
La Costa Heights	Metrobility	R-AAR1000	2 Slot Chassis	1
La Costa Heights	Metrobility	R-152-1D	1000TX to LX	1
Mission Estancia	Metrobility	R-AAR1000	2 Slot Chassis	1
Mission Estancia	Metrobility	R-152-1D	1000TX to LX	1
Ocean Knoll	Metrobility	R-AAR1000	2 Slot Chassis	1
Ocean Knoll	Metrobility	R-152-1D	1000TX to LX	1
Olivenhain Pioneer	Metrobility	R-AAR1000	2 Slot Chassis	1
Olivenhain Pioneer	Metrobility	R-152-1D	1000TX to LX	1
Park Dale Lane	Metrobility	R-AAR1000	2 Slot Chassis	1
Park Dale Lane	Metrobility	R-152-1D	1000TX to LX	1
Paul Ecke Central	Metrobility	R-AAR1000	2 Slot Chassis	1
Paul Ecke Central	Metrobility	R-152-1D	1000TX to LX	1
District Office	Metrobility	R5000-17HS	17 slot chassis	1
District Office	Metrobility	ACPS-17HS	AC PS Hot Swappable	2
District Office	Metrobility	R502-M	Management Line Card	1
District Office	Metrobility	R-152-1D	1000TX to LX	9

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## Service Level Agreement

## Sunesys Managed Fiber Network Service Level Agreement (SLA)

All locations on the Managed Fiber Network are supported by this SLA, which may be updated by Sunesys. The SLA is effective as of the first day of the second month after acceptance of the service by the customer.

### NETWORK AVAILABILITY

Region	Goal	Remedy
All Regions, All Tiers	99.9%	Each cumulative hour of Network Downtime qualifies Customer for one day's charges for that site pro-rated from the MRC of the Affected Service.

### LATENCY

Region	Goal	Actual Latency = Remedy		
All Regions, All Tiers	10ms	11-30ms = 10% of MRC	31-50ms = 25% of MRC	Greater than 50 ms = 50% of MRC

### PACKET DELIVERY

Region	Goal	Actual Packet Delivery = Remedy		
All Regions	99.75%	99.01 % - 99.74 % = 10% MRC	95 % - 99 % = 25% MRC	Less than 95 % = 50% of MRC

**Components Included:** All components of the Sunesys Managed Fiber Network and Sunesys provided Fiber interface equipment are covered by this SLA. This includes complete end-to-end connectivity from the Sunesys NID (network interface device) to the Sunesys NID. There are no local access/connection facilities (i.e. the local loop or tail circuits) and the fiber optics shall be extended from site equipment rack to equipment rack.

### Measurement:

**Network Availability:** Network availability is based on "Network Downtime" which exists when a particular Customer is unable to transmit and receive data between sites and such failure is recorded in the Sunesys trouble ticket procedure. Network Downtime is measured from the time the trouble ticket is reported to the time the Affected Service is again able to transmit and receive data.

**Latency:** The average network delay ("latency") will be measured via roundtrip pings, at the request of the customer, every 5 minutes for a peEncinitas Union of 1 hour to adequately determine a consistent average performance level for latency at the Hub node to any of the remote nodes.

**Packet Delivery:** Packet Delivery will be measured at the request of the customer, every 5 minutes for a peEncinitas Union of 1 hour to determine a consistent average monthly performance level for packets actually delivered between the relevant nodes.

**Remedies:** In order to request SLA credits, the Customer must contact the Account Manager assigned to their account. In order to receive service credits set forth by this SLA, such requests must be made within fifteen (15) business days of the last day of the month in which the relevant SLA was not met. A credit shall be applied only on the month in which the event giving rise to the credit occurred. The maximum SLA credits issued in any one calendar month shall not exceed (i) seven (7) days charges pro-rated from the MRC of the affected Service with respect to Network availability for that particular site; or (ii) 50% OF THE MRCs of the affected Service with respect

to the other SLAs. In no event shall the total credit, in the aggregate for all credits issued in one month exceed the equivalent of 50% of the relevant MRCs for the affected Service.

**Service Credit Exceptions:** Service credits shall not be issued where the SLA is not met as a result of : (i) the acts or omissions of Customer, its employees, contractors or agents or its End Users; (ii) the failure or malfunction of customer provided equipment, applications or systems not owned or controlled by Sunesys; (iii) Force Majeure events; (iv) scheduled service maintenance (v) the breaking or cutting of fiber along the pathway, this shall follow the guidelines of the maintenance portion of the contract or; (vi) the unavailability of required Customer personnel, including as a result of failure to provide Sunesys with accurate, current contact information.

## **FIBER MAINTENANCE AND REPAIR**

### **Sunesys Requirements:**

**Maintenance Technicians:** Sunesys shall have certified technicians located within a 100-mile radius of the School District.

**Critical Components:** Sunesys shall stock all critical components of the fiber network within a 100-mile radius of the School District.

**On Call Technicians:** Sunesys shall have "on call" installation technicians 24 hours per day, 365 days per year.

**System Monitoring:** Sunesys shall monitor the connectivity to all locations 24 hours per day, 365 days per year in the Sunesys NOC.

### **System Failures:**

**Major Failure:** In the event of a major system failure, Sunesys will respond promptly without regard to the time of day or day of week, including holidays. Repair personnel as required, shall arrive at the installation site within four hours of the NOCs, Districts, utility company or the municipalities' service call. A major failure is defined as any complete loss of communications between any locations due to a failure of Sunesys infrastructure or equipment.

- i. The maximum time of repair, once on site, shall be 24 hours. The District and Sunesys recognize that time is of the essence in this situation and that the District shall suffer loss if the failure is not corrected within the twenty-four hours. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the district. Accordingly, instead of providing any such proof, the District and Sunesys agree that as liquidated damages for delay (but not as a penalty) Sunesys shall pay the District fifty dollars (\$50.00) for each hour of operation that expires after the committed maximum time of 24 hours. The Hours of Operation for the District are Monday through Friday from 8:15a.m. to 3:00 p.m. except holidays.
- ii. For a major system failure not corrected within 48 hours of notice to Service Provider, the Customer shall have the right to cause repairs necessary in order to remediate the failure, at Sunesys expense.

**Minor Failure:** In the event of a minor system failure, Sunesys will respond promptly without regard to the time of day or day of week, excluding Saturdays, Sundays and holidays. Repair personnel as required, shall arrive at the installation site within twenty-four hours of either the District's, Pole Owners or the Municipalities' service call. A minor failure is defined as any alteration of the cladding of the link between sites without severing any connections or any bandwidth performance for a period of greater than 2 minutes resulting in less than 90% throughput to any location.



Act of God: A failure caused by a force majeure (act of God) is not required to be repaired within 24 hours of the service call. However, Sunesys shall utilize best efforts to arrive at the installation within 8 hours of the Districts, Pole Owners or the Municipalities service call.

Service Calls:

Required Information: The Customer shall only be required to have the following information when making a service call:

- i. The name of the District
- ii. A description of the problems encountered.

Service Progression: Following the service call, Sunesys shall open a service order indicating the exact time the Service Call was received and the description of the problem and the cable identification. The Customer shall be supplied with a reference service order number.

- i. The Customer shall be advised of the progress of any repair following receipt of a Service Call.
- ii. No later than 1 hour after receipt of the Service Call, the NOC Tech shall call the Customer back to inform of the action that will be taken to resolve the breakdown.
- iii. After 2 hours from receipt of the Service Call, the Customer may contact the Splicing Supervisor to obtain more details on the work being undertaken.
- iv. After 4 hours from receipt of the Service Call, if the breakdown has not been resolved, the Customer may contact the Splicing Supervisor to obtain more details on the repair work underway.
- v. After 6 hours from receipt of the Service Call, if the breakdown has not been resolved, the Customer may contact the Outside Plant Supervisor to obtain more details on the repair work underway.
- vi. After 8 hours from receipt of the Service Call, if the breakdown has not been resolved, the Customer may contact the Senior Vice President to obtain more details on the repair work underway.
- vii. After 10 hours from receipt of the Service Call, if the breakdown has not been resolved, the Customer may contact the President to obtain more details on the repair work underway.

Escalation List:

Trouble & Maintenance Escalation List

Department	Title	Level	Name	Office #	Cell #
Maintenance	NOC Tech	1st Level	Tech On Duty	800-286-6664	N/A
Maintenance	Splicing Supervisor	2nd Level	James Spurrier	267-927-2000	267-718-0990
Operations	Outside Plant Supervisor	3rd Level	Victor Vassulluzzo	267-927-2000	267-718-0958
Operations	Senior Vice President	4th Level	Alan Katz	267-927-2000	267-718-0960
EXECUTIVE	President	5th Level	Larry Coleman	267-927-2000	267-718-1010

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## Sample Contract

## WIDE AREA NETWORK LICENSE AGREEMENT

This WIDE AREA NETWORK LICENSE AGREEMENT (the "Agreement") is made as of \_\_\_\_\_ between SUNESYS, INC., which has a place of business at 202 Titus Avenue, Warrington, PA 18976 ("SUNESYS") party of the first part, and Encinitas Union School District, having a place of business at 101 S. Rancho Santa Fe Rd., Encinitas, Ca. 92024 ("Licensee") party of the other part (also sometimes referred to jointly as "the parties"); and

WHEREAS, SUNESYS has or intends to acquire easements, enter into leases and co-occupancy agreements, acquire conduit rights, pole attachment and license agreements to use, occupy and enjoy certain real property and rights of way, in connection with its provision of a communications transmission system connecting Licensee's Premises (hereunder defined) with Licensee's other remote premises, in order for all of said premises to communicate with one another through the exchange of voice, data and video communications; and

WHEREAS, SUNESYS intends to install its equipment, and a multimedia optical fiber communication transmission system within Licensee's Premises and on utility poles or within conduit systems located in the Licensee's Premises and on routes connecting SUNESYS and all of the Licensee's other remote premises; and

WHEREAS, Licensee has requested a license to use the SUNESYS multimedia optical fiber transmission system as collocated, installed, operated and maintained for the term specified in this Agreement; and

WHEREAS, SUNESYS agrees to grant such license to Licensee subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

### 1. DEFINITIONS

As used in this Agreement:

1.1 Authorized Use means Licensee's use of the SUNESYS Wide Area Network for multimedia telecommunications traffic of Licensee and its employees, officers and agents for Licensee's business purposes only in accordance with paragraph 7 of this Agreement.

1.2 Fiber means one or more fiber optic strands subject to this Agreement through which an associated light, signal or light communication transmission must be provided to furnish service.

1.3 SUNESYS Wide Area Network (also "Wide Area Network") means the voice, data and video network which provides connections from within the Licensee's Premises (hereunder defined) to the Connected Premises (hereunder defined) via the SUNESYS Equipment (hereunder defined) and through the fiber optical communications transmission facilities, lines, cable, conduit and Fiber (defined hereunder) maintained at the Licensee's Premises (defined hereunder) and in the conduit systems along the several Routes as specified, all comprising part of the end-to-end provision of multimedia telecommunications services. The SUNESYS Equipment is an integral component part of the SUNESYS Wide Area Network and is included and subsumed within and under the definition of the SUNESYS Wide Area Network for all purposes of this Agreement.

1.4 SUNESYS Equipment (also "Equipment") means that part of the SUNESYS Wide Area Network which is all of the equipment, transmission devices, servers, routers, cables, electronics, parts, supplies, connections, racks, boxes and personal property of Licensor and its vendors, suppliers and contractors, installed, affixed or stored in the Licensee's Premises or in the Connected Premises and is necessary and essential for SUNESYS' provision of the end-to-end transmission of telecommunications services (voice, data

and/or video) over SUNESYS' Wide Area Network to Licensee, as to all of which Licensee shall have no title or other interest except pursuant to the terms hereof.

1.5 Hazardous Substances include any substance the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law or any substance which is or becomes defined as "Hazardous Waste," "Hazardous Substance," pollutants, toxic substances, compounds, elements, or chemicals pursuant to the Comprehensive Environmental Response Act (42 U.S.C. § 651 et seq.), as amended, or any other federal, state or local environmental cleanup laws. Hazardous Substances also include asbestos, lead paint, Polychlorinated Biphenyls ("PCBs") and radon gas.

1.6 Hazardous Discharge means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of Hazardous Substances from, in, or onto SUNESYS' Wide Area Network.

1.7 Licensee's Premises shall mean all the buildings and land owned or otherwise occupied by the Licensee described in Exhibit "A" as the property of Licensee to be served by the Wide Area Network under the SUNESYS Contract.

1.8 Connected Premises shall mean all the other buildings and facilities of the Licensee described in Exhibit A as the other properties of the Licensee to be served by the Wide Area Network under the SUNESYS Contract.

1.9 The Routes are the rights of way (which may be shared) between and among the Licensee's Premises and the Connected Premises and SUNESYS and include the easement granted to SUNESYS herein and other easements, rights of ways, leases and licenses acquired by SUNESYS to effectuate this Agreement.

1.10 Acceptance Date shall have the meaning set forth in Section 4.3, below.

## **2. GRANT OF LICENSE**

SUNESYS grants to Licensee and Licensee accepts from SUNESYS a license solely for Licensee's Authorized Use of the SUNESYS Wide Area Network (the "License"), under and subject to the terms and conditions of and as provided in this Agreement. Licensee shall have no further right, title or other interest in the SUNESYS' Wide Area Network. SUNESYS shall have the right to grant and renew rights to any other entity to use SUNESYS' Wide Area Network or any other property of SUNESYS including the facilities used to provide service to Licensee over the Wide Area Network; provided, however, that during the term of this Agreement, SUNESYS shall have no right to grant and renew any rights to any entity that interferes with Licensee's use of the SUNESYS Wide Area Network.

## **3. GRANT OF EASEMENTS/CO-OCCUPANCY PRIVILEGES**

In consideration of the above grant of License and One Dollar (\$1.00), Licensee hereby grants to SUNESYS, and its associated and affiliated companies a perpetual affirmative easement, right of way, and license and all other necessary privileges in, on, under and through those certain parts and areas of Licensee's Premises and the Connected Premises as may be necessary or convenient for SUNESYS, its vendors and suppliers to store, colocate, install, construct, erect, maintain, operate, repair and replace, if necessary, its SUNESYS Wide Area Network and to conveniently implement and effectuate the purposes of this Agreement, for the Term of this Agreement and any renewals and modifications thereof, only, all at no additional charge or cost to SUNESYS.

## **4. WORK**

4.1 SUNESYS shall use best efforts to install the Wide Area Network segments, in phases if applicable, on or before Two Hundred Seventy (270) days from the date of this Agreement (the "Completion Date"). SUNESYS covenants that the Wide Area Network, which it installs pursuant hereto, shall be installed substantially and in all material respects in accordance with standard specifications and co-occupancy protocols. Work shall include the labor and material. There are no additional costs associated with this section of the Agreement and the full License fee detailed in Section 4 below includes the labor and material described herein.

4.2 SUNESYS shall test the Wide Area Network upon completion to verify that the Wide Area Network is installed and operational in accordance with standard fiber optic specifications. Licensee shall cooperate with and assist, as may be reasonably required, SUNESYS, in performing such test. When SUNESYS has determined that the results of the testing with the Wide Area Network show that the Wide Area Network is installed and operating, SUNESYS shall promptly notify Licensee in writing.

4.3 Licensee agrees to acknowledge the SUNESYS notice in writing and to thereby accept its License for its Authorized Use of the SUNESYS Wide Area Network within three (3) business days of its receipt of notice; otherwise, Licensee's acceptance will be deemed to have occurred on the third (3<sup>rd</sup>) business day (the "Acceptance Date") after the notice of installation is sent by SUNESYS.

## **5. LICENSE FEE**

5.1 Licensee shall pay to SUNESYS a monthly license fee of Thirty Two Thousand Five Hundred Thirty Dollars Eleven Cents (\$32,530.11) beginning on the Acceptance Date and continuing on the monthly anniversary of the Acceptance Date, in advance, for the initial term of this Agreement. Licensee intends to apply for E-rate funding to help pay for the costs of the contract. SUNESYS agrees to provide discounted bills to the Licensee. Licensee shall be responsible for paying to SUNESYS the nondiscounted portion of the monthly recurring charges. The Parties agree that Licensee's nondiscounted cost of the monthly recurring charge may have to be adjusted (either increased or decreased) depending upon whether Licensee's E-rate discount changes in future E-rate funding years. In the event that the services under this Agreement are determined to be ineligible for reimbursement by the California Teleconnect Fund ("CTF") as a result of Sunesys' not being an eligible provider under the rules and regulations governing CTF reimbursement, Sunesys shall reduce the license fee by the amount for which Licensee would have been eligible for reimbursement by CTF. During the renewal term described in Section 6, below, the monthly license fee shall be Nine Thousand Seven Hundred Fifty Nine Dollars Three Cents (\$9,759.03). This fee will be adjusted annually on the anniversary of the Acceptance Date beginning with the second year of the first renewal term by the percentage change in the Consumer Price Index ("CPI") for the Los Angeles, California metropolitan area, as determined by the United States Department of Labor, Bureau of Labor Statistics for the most recently available Twelve (12) month period preceding the anniversary date. In the event that the United States Department of Labor abandons the CPI, or fails to publish the CPI, then the parties shall use whatever the United States Government publishes as a substitute to provide information as to increase in the cost of living for the Los Angeles area, provided, however, that in the event that Licensee does NOT agree with the amount of such adjustment, Licensee may terminate this Agreement upon notice to SUNESYS without any further liability to SUNESYS.

5.2 In addition to the License fee, Licensee shall pay to SUNESYS all taxes, charges, fees and other impositions charged or imposed on Licensee's Wide Area Network, including, without limitation, federal, state and local sales and use taxes, telecommunications taxes, universal service fees and other similar charges, but excluding any taxes assessed upon the income or imposed upon the real or personal property of SUNESYS.

5.3 Except as otherwise specifically provided, Licensee shall pay all applicable fees and charges provided for in this Agreement, within thirty (30) days after receipt of invoice.

5.4 In the event that an invoice remains unpaid by Licensee for a period of ten (10) days after the invoice payment due date as computed under section 5.2, then Licensee shall be subject to a late payment

charge of one and one-half (1-1/2%) percent per month of the unpaid balance or the highest lawful rate, whichever is less.

5.5 In the event the E-rate program is terminated within the initial term of this Contract, and the United States government does not provide a similar funding mechanism as a replacement for the E-rate program, then SUNESYS shall renegotiate the contract with the District in good faith.

**6. LICENSE TERM**

The initial term of the License shall commence on the Acceptance Date and shall continue for sixty (60) months from the Acceptance Date. After the initial term of this Agreement, this Agreement will automatically renew in Sixty (60) month increments, unless Licensee gives written notice of its intent not to renew this Agreement to SUNESYS at least sixty (60) days period to end of the then current term.

**7. INSTALLATION, USE, MAINTENANCE AND OPERATION**

7.1 SUNESYS shall colocate, install, test and maintain Licensee's Wide Area Network. Licensee shall cooperate with and assist, as may be reasonably required, SUNESYS in performing said tests and maintenance. In the event of service outages or other maintenance request, SUNESYS agrees to use best efforts to respond within two (2) hours of time of notice.

7.2 SUNESYS shall be permitted to access Licensee's Premises, the Connected Premises and the Routes and the Wide Area Network whenever necessary in order for SUNESYS to maintain and operate SUNESYS' Equipment and other property that is located on or in Licensee's Premises and/or the Connected Premises.

7.3 SUNESYS shall be responsible for all necessary splicing.

7.4 Licensee will have no maintenance obligation of rights under this Agreement. Should any Equipment, splices or other work be placed by Licensee or at Licensee's direction not in accordance with this Agreement, SUNESYS may, at its option, correct said condition. SUNESYS shall notify Licensee in writing period to performing such work whenever practicable. However, when such conditions pose an immediate threat to the physical integrity of SUNESYS Wide Area Network, SUNESYS may perform such work and take such action that it deems necessary without first giving notice to Licensee. As soon as practicable thereafter, SUNESYS shall advise Licensee of the work performed and the action taken and shall endeavor to arrange for re-accommodation of any of Licensee's other equipment or Premises adversely affected. Licensee shall promptly reimburse SUNESYS for all reasonable costs incurred by SUNESYS for all such work, action and re-accommodation performed by SUNESYS.

7.5 Licensee shall, at its sole cost and expense, promptly respond to and remediate any Hazardous Discharge to, on or into the Wide Area Network resulting from Licensee's operations.

7.6 SUNESYS shall be responsible for obtaining and maintaining from the appropriate public or private authority any pole attachment agreements, franchises, licenses, state, local or right-of-way permits or other authorizations required to access or enter upon the Licensee's Property or Connected Property where the Wide Area Network is located and to operate and maintain Licensee's Fiber Optic Facilities used for Licensee's Wide Area Network. Licensee will not engage in any activity, which affects SUNESYS' Equipment, the Wide Area Network or its right-of-way interests without the written permission of SUNESYS.

7.7 Licensee, at its sole cost and expense, shall (i) use Licensee's Wide Area Network and (ii) conduct all work in or around SUNESYS' Wide Area Network in a safe condition and in a manner reasonably acceptable to SUNESYS, so as not to physically, electronically or inductively conflict or interfere or otherwise adversely affect SUNESYS' Wide Area Network or the Equipment and facilities placed therein by SUNESYS, or other authorized licensees of the Wide Area Network.

7.8 Licensee must obtain prior written authorization from SUNESYS before approving any further work which Licensee may desire to be performed and SUNESYS must specifically approve the party designated to perform such work before Licensee or any of its other contractors shall perform any work in or around SUNESYS' Wide Area Network.

7.9 In the event Licensee receives information that the Wide Area Network is damaged, it shall notify SUNESYS of said damage by phone at 800-286-6664. In the event SUNESYS receives information that any part of the SUNESYS Wide Area Network is damaged, SUNESYS will notify Licensee of said damage by phone at ( ) - . In each case, the caller shall provide the following information:

1. Name of entity making report.
2. Location reporting problem.
3. Name of contact person reporting problem.
4. Description of the problem in as much detail as possible.
5. Time and date the problem occurred or began.
6. State whether or not the problem presents a jeopardy situation to SUNESYS' Wide Area Network.

7.10 Licensee shall be responsible for providing SUNESYS with all keys, permissions, specific co-occupancy arrangements, leases, easements and rights of way necessary or desirable for SUNESYS to deliver, store install, erect, construct, use, maintain, test, repair and replace its Wide Area Network and its SUNESYS Equipment during the Term of this Agreement.

## **8. OWNERSHIP**

SUNESYS' Wide Area Network and all SUNESYS Equipment shall at all times remain the sole and exclusive property of SUNESYS and legal title shall be held by SUNESYS. Neither the use of the Wide Area Network by Licensee hereunder, nor the payments by Licensee contemplated hereby, shall create or vest in Licensee any easement, interest, or any other ownership or property right of any nature in the SUNESYS Wide Area Network except that SUNESYS agrees to Licensee's right to use the SUNESYS Wide Area Network as Licensee hereunder for its Authorized Use during the term of this Agreement. Licensee shall not have or grant any security interest in the SUNESYS Wide Area Network or in any Equipment or in any part or component thereof during or after the Term of this Agreement.

## **9. EMINENT DOMAIN**

If there is a taking of the Wide Area Network by right or threat of eminent domain (a "Taking") which, as agreed by the parties, or in the absence of such agreement as determined pursuant to the provisions of Section 16 of this Agreement, results in the remainder of the Wide Area Network being unable to be restored to a condition suitable for Licensee's business needs within thirty (30) days from the date of the Taking ("Substantial Taking"), this Agreement shall terminate. In such event any prior licensee fee and/or maintenance fee shall abate from the date of Taking and any previously paid license fee and/or maintenance fee shall abate from the date of Taking and any previously paid license fee and/or maintenance fee attributable for any period beyond such date shall be prorated to the date of the Taking and the remainder returned to Licensee, including a prioritization of the initial license fee over the five years of this Agreement. If there shall be a Taking which does not constitute a Substantial Taking, this Agreement shall not terminate but SUNESYS shall, with due diligence and its best efforts, restore the SUNESYS Wide Area Network as speedily as practical to its condition before the Taking but in no event shall such restoration exceed thirty days.

## **10. INDEMNIFICATION**

**13. DISCLAIMER OF WARRANTIES**

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SUNESYS MAKES NO WARRANTIES REGARDING THE SERVICES OR THE WIDE AREA NETWORK DESCRIBED IN AND PROVIDED UNDER THIS AGREEMENT AND MAKES NO WARRANTIES EXPRESS OR IMPLIED, WITH RESPECT TO THE SUNESYS WIDE AREA NETWORK INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**14. SUNESYS SALES OR DISPOSITIONS**

Nothing in this Agreement shall prevent or be construed to prevent SUNESYS from selling or otherwise disposing of any portion of SUNESYS' Wide Area Network, the SUNESYS Equipment or any other property of SUNESYS used for the Wide Area Network, provided, however, that in the event of a sale or other disposition, SUNESYS shall condition such sale or other disposition so that it will not adversely affect the rights of Licensee under this Agreement. SUNESYS shall promptly notify Licensee of the proposed disposition of the SUNESYS' Wide Area Network or other property used by Licensee if Licensee's use will be adversely affected in any material way.

**15. LIENS**

Licensee shall keep SUNESYS' Wide Area Network and all SUNESYS Equipment and other property of SUNESYS free from all mechanic's, artisans, materialman's, architect's, or similar services' liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released within thirty (30) days of notice.

**16. DEFAULT PROVISIONS AND REMEDIES**

16.1 Each of the following shall be deemed an Event of Default by Licensee under this Agreement:

16.1.1 Failure of Licensee to pay the license fee or any other sum required to be paid under the terms of this Agreement and such default continues for a period of fourteen (14) days after written notice thereof to Licensee;

16.1.2 Failure by Licensee to perform or observe any other terms, covenant, agreement or condition of this Agreement on the part of Licensee to be performed and such default continues for a period of thirty (30) days after written notice thereof from SUNESYS (provided that if such default cannot be cured within such thirty (30) day period, this period will be extended if Licensee commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure);

16.1.3 The filing of a tax or mechanic's lien against SUNESYS' Wide Area Network or other property of SUNESYS which is not bonded or discharged within thirty (30) days of the date Licensee receives notice that such lien is filed;

16.1.4 An event of Licensee's Bankruptcy which is not dismissed or resolved within sixty (60) days of any official filing of bankruptcy in a court of competent jurisdiction;

16.1.5 If Licensee knowingly uses the SUNESYS Wide Area Network in violation of any law or in aid of any unlawful act or undertaking;

16.1.6 If Licensee occupies any portion of SUNESYS' Wide Area Network or asserts a possessory right to any SUNEYS Equipment without having first been issued a license therefore; or



16.2 Upon the occurrence of an Event of Default, SUNESYS, without further notice to Licensee in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

16.2.1 Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform and of which SUNESYS shall have given Licensee notice, the cost of which performance by SUNESYS shall be payable by Licensee to SUNESYS upon demand;

16.2.2 Elect to terminate Agreement by giving notice of such election to Licensee;

16.2.3 Exercise any other legal or equitable right to remedy which it may have.

Any costs and expenses incurred by SUNESYS (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to SUNESYS by Licensee upon demand.

16.3 All rights and remedies of SUNESYS set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

16.4 The following events or occurrences shall constitute a default by SUNESYS under this Agreement:

16.4.1 Any material noncompliance by SUNESYS with the terms of this Agreement;

16.4.2 Any material breach by SUNESYS of a representation or express warranty under this Agreement.

Licensee shall give prompt written notice to SUNESYS of the occurrence of any default under this Agreement. If such default continues for seven (7) days after receipt of such notice (provided that if such default cannot be cured within such seven day period, this period will be extended if SUNESYS continues to cure such default within such seven (7) day period and proceeds diligently thereafter to effect such cure within an additional seven (7) day period after which the Licensee may then terminate immediately upon notice), Licensee may at its option, terminate this Agreement and pursue any legal remedies it may have at law or equity.

## **17. DISPUTES RESOLUTION**

If a dispute arise out of or relates to this Agreement or its breach and the dispute cannot be settled through negotiation, the parties agree to submit the dispute to a sole mediator selected by the parties, or, at any time at the option of a party, to mediation by the AAA. If not thus resolved, it will be referred to a sole arbitrator selected by the parties within thirty (30) days after the mediation or in the absence of such selection to AAA arbitration which shall be governed by the United States Arbitration Act and judgment on the award may be entered in any court having jurisdiction. The arbitration shall determine issues of arbitrability, but may not limit, expand or otherwise modify the terms of this Agreement. The parties, their representatives and other participants and the mediator and arbitrator shall hold the existence, content and results of mediation and arbitration in confidence. Each party will bear its own attorneys' fees associated with the mediation and arbitration and will pay all other costs and expenses of the mediation and arbitration as the rules of the AAA provide.

## **18. FORCE MAJEURE**

Except for payment of the license fee and any other amounts agreed to by the parties, neither party shall have any liability for its delays or its failure to performance due to: fire, explosion, pest damage,

power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

**19. TAXES AND OTHER CHARGES**

If it is determined by any state or local governmental authority that the acquisition, license, grant, transfer or disposition of any part or portion of the property or rights herein described to or by Licensee, requires payment or any tax or fee (including sales or use tax) under statute, regulation or rule (but excluding any tax on or calculated with respect to the net income or capital of SUNESYS), Licensee shall pay the same, plus penalty or interest thereon, directly to the taxing authority but only to the extent otherwise required by law.

**20. SUCCESSION, ASSIGNABILITY**

20.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors or assigns.

20.2 Neither party shall assign, transfer, or dispose this Agreement or any of its rights or obligations hereunder without prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may assign or transfer this Agreement to a controlling or controlled affiliate or to a successor in the event of reorganization, including a merger or sale of substantially of all its assets, without the consent of the other party. An assignment, transfer or disposition of this Agreement by Licensee shall not relieve Licensee of any of its obligations under this Agreement. Notwithstanding the foregoing, Licensee shall not have the right to license to any third party the right to use or the use of the SUNESYS Wide Area Network as provided in and subject to this Agreement. .

20.4 Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

**21. NOTICES**

Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given in writing and shall be given by personal delivery by registered or certified mail, return receipt requested, by telecopy or commercial overnight delivery service addressed to the recipient as set forth as follows or to such other address, individual or telecopy number as may be designated by notice given by the party to the other:

SUNESYS:

SUNESYS, INC.  
202 Titus Avenue  
Warrington, PA 18976  
Attention: Senior Counsel  
Telecopier Number: 267.927.2090  
Emergency Telephone Number: 800.286.6664

**LICENSEE:**

Encinitas Union School District  
101 S. Rancho Sante Fe Rd.  
Encinitas, Ca. 92024  
Attn:  
Telecopier Number:  
Emergency Telephone Number:

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered or certified mail return receipt requested on the date of receipt thereof and, if given by telecopy, the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during normal business hours.

**22. NON-WAIVER**

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition.

**23. CHOICE OF LAW**

The construction, interpretation and performance of this Agreement shall be governed by the law of the state in which the SUNESYS Wide Area Network is located without regard to its conflicts of laws provisions.

**24. HEADINGS**

All headings contained in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement or any clause.

**25. CONFIDENTIALITY AND PROPRIETARY INFORMATION**

25.1 In connection with this Agreement, either party may furnish to the other certain information that is marked or otherwise specifically identified as proprietary or confidential ("Confidential Information"). This Confidential Information may include, among other things private easements, licenses, utility agreements permits, other right-of-way granting documents, specifications, designs, plans, drawings data prototypes, and other technical and/or business information. For purposes of this Section 24, the party that discloses confidential Information is referred to as the "Disclosing Party", and the party that receives Information is referred to as the "Receiving Party".

25.2 When Confidential Information is furnished in tangible form, the Disclosing Party shall mark it as proprietary or confidential. When confidential Information is provided orally, the disclosing Party shall, at the time of disclosure or promptly thereafter, identify the Confidential Information as being proprietary or confidential.

25.3 With respect to Confidential Information disclosed under this Agreement, the Receiving Party and its employees shall:

- (a) hold the Confidential Information in confidence, exercising a degree of care not less than the care used by the Receiving Party to protect its own proprietary or confidential information that it does wish to disclose.
- (b) restrict disclosure of the Confidential Information solely to those of its employees who have a need to know in connection with the performance of this Agreement, and not

disclose the Confidential Information to any other person or entity without the prior written consent of the disclosing Party;

- (c) advise those employee of their obligations with respect to the Confidential Information; and
- (d) use the Confidential Information only in connection with the performance of this Agreement, except as the Disclosing Party may otherwise agree in writing.

25.4 Confidential Information shall be deemed the property of the Disclosing party. Upon written request of the Disclosing Party, the Receiving Party shall return all Confidential Information received in tangible form, except that each party's legal counsel may retain one copy in its files solely to provide a record of such Confidential Information for archival purposes. If the Receiving Party loses or makes an unauthorized disclosure of Confidential Information it shall notify the Disclosing Party and use reasonable efforts to retrieve the Confidential Information.

25.5 the Receiving Party shall have no obligation to preserve the proprietary nature of Confidential Information which:

- (a) was previously known to the Receiving Party free of any obligation to keep it confidential; or.
- (b) is or becomes publicly available by means other than unauthorized disclosure; or
- (c) is developed by or on behalf of the Receiving Party independently of any Confidential Information furnished under this Agreement; or
- (d) is received form a third party whose disclosure does not violate any confidentiality obligation to the knowledge of the receiving party.

25.6 If the Receiving Party is required to disclose the Disclosing Party's Confidential Information by an order or a lawful process of a court or governmental body, the Receiving Party shall promptly notify the disclosing Party, and shall cooperate with the Disclosing Party in seeking reasonable protective arrangements before the Confidential Information is produced.

25.7 Each party agree that the Disclosing Party would be irreparably injured by a breach of this Section 24 by the Receiving Party or its representatives and that the Disclosing Party may be entitled to equitable relief, including injunctive relief and specified performance, in the event of any breach of the provisions of this Section 24. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 24, but shall be in addition to all other remedies available at law or in equity.

## **26. REQUIRED RIGHTS**

26.1 Given Licensee's permission for Licensor to occupy Licensee's Premises and its providing full access to Licensee's Premises to Licensor under Paragraph 3 of this Agreement, SUNESYS covenants that it will, to the best of its knowledge, have obtained by the time the SUNESYS Wide Area Network is made available to Licensee (and will use commercially reasonable efforts to cause to remain in effect during the term of this Agreement) easement, leases, licenses, fee interests, rights of-way, permits, authorizations and other rights necessary and requisite to enable SUNESYS to grant the License to Licensee ("Required Rights"). Subject to the foregoing obligations of SUNESYS, Licensee is accepting the License on an "AS IS, WHERE IS" basis and receiving its interests in the SUNESYS Wide Area Network only to the extent such interests are held by SUNESYS.

## **27. REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants that: (i) it has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; (ii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iii) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court, or body.

**28. CALIFORNIA PUBLIC UTILITY COMMISSION REVIEW**

28.1 This Agreement shall not become finally effective until it has been submitted to the California Public Utility Commission for review and the time for such review has expired.

28.2 Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records, and files of Licensee and SUNESYS connected with the performance of this Agreement are subject to the examination and audit of the State Auditor of the State of California, at the request of the Licensee or as part of any audit of the Licensee, for a period of three (3) years after the final payment is made under this Agreement. SUNESYS agrees to preserve such books, records, and files for the audit period.

**29. ENTIRE AGREEMENT**

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement. There are no understandings or representations, express or implied, not expressly set forth in this Agreement. This Agreement shall not be modified or amended except by a writing signed by the party to be charged.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be signed by their duly authorized representatives.

SUNESYS, INC.

By:  
Name:  
Title: Vice President  
Date:

ENCINITAS UNION SCHOOL DISTRICT

By:  
Name:  
Title:  
Date: